

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 JULIE MILLER,

4 Plaintiff,

5 v.

6 EQUIFAX INFORMATION SERVICES,  
7 LLC, a foreign limited liability  
company,

8 Defendant.

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Case No. 3:11-CV-1231-BR

July 24, 2013

Volume 2

Portland, Oregon

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10 TRANSCRIPT OF PROCEEDINGS

11 (Jury Trial - Day 2 )

12  
13 BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE  
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21  
22

23 COURT REPORTER:

AMANDA M. LeGORE, RDR, CRR, FCRR, CE  
U.S. COURTHOUSE  
1000 SW Third Avenue, Suite 301  
Portland, OR 97204  
(503)326-8184  
24  
25

1 APPEARANCES:

2 FOR THE PLAINTIFF:

MICHAEL BAXTER  
JUSTIN BAXTER  
Baxter & Baxter, LLP  
8835 SW Canyon Lane, Suite 130  
Portland, OR 97225  
(503)297-9031  
michael@baxterlaw.com  
justin@baxterlaw.com

7 FOR THE DEFENDANT:

JEFFREY EDELSON  
Markowitz, Herbold, et al.,  
1211 SW Fifth Avenue  
Suite 3000  
Portland, OR 97204  
(503)295-3085  
jeffedelson@mhgm.com

11  
12 PHYLLIS SUMNER  
LEWIS PERLING  
King & Spalding, LLP  
1180 Peachtree Street, NE  
Suite 1700  
Atlanta, GA 30309  
(404)572-4799  
psumner@kslaw.com  
lperling@kslaw.com

## INDEX

## Witness Index

## FOR THE PLAINTIFF:

	<u>Direct</u>	<u>Cross</u>	<u>ReDirect</u>	<u>ReCross</u>
Rick Miller	219	228	229	
Sheryl Bauer	230	236	240	
Karen Fox	241	243		
Monica Evanson	248	251		
Margaret Leslie	255			
LaDeamya Mixon	270			
Evan Hendricks	289	309		

## FOR THE DEFENDANT:

	<u>Direct</u>	<u>Cross</u>	<u>ReDirect</u>	<u>ReCross</u>
Anne Fortney	345	382		
LaDeamya Mixon	398			

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## Colloquy

187

1 (Wednesday, July 24, 2013; 8:30 a.m.)

2  
3 P R O C E E D I N G S

4  
5 THE COURT: All right. So let's begin with the  
6 verdict form. Comments?

7 MR. JUSTIN BAXTER: It's my understanding the most  
8 recent draft is acceptable to both sides.

9 THE COURT: That which is called the second draft?

10 MR. JUSTIN BAXTER: Correct.

11 THE COURT: Is that right?

12 MR. EDELSON: That is correct.

13 THE COURT: Good. We can move on, then.

14 Let's move to the jury instructions and the form  
15 called "second draft." And what I would like to do is go  
16 through them page-by-page; both with respect to editorial  
17 suggestions, typographical errors, formating, substance.

18 Let's go through it all once, and then you can  
19 address concerns.

20 So on the first page, of course, when the jury gets  
21 the document, it won't have the caption, "second draft." It  
22 will be final. So I'll obviously take care of that.

23 I don't see any issues on the first page, and assume  
24 you don't either.

25 Maybe you can tell me where the first issue may

## Colloquy

188

1 arise, of any kind, in the pages that you have.

2 MR. EDELSON: Page 10.

3 THE COURT: I'm just noting on page 7, we still have  
4 pending the hypothetical question issue. As you've been  
5 thinking, do you -- do you think you will be asking a  
6 hypothetical question or not?

7 MR. JUSTIN BAXTER: I do know.

8 THE COURT: All right. Then I'm going to take out  
9 the brackets, the unnecessary language, and put that into  
10 regular text and not bold text.

11 Page 10. All right. Page 10 is in the midst of the  
12 summary of the claims, and where -- what should I focus on, and  
13 what's the issue?

14 MR. EDELSON: Your Honor, this is a matter of how  
15 we're going to describe the damages.

16 THE COURT: Okay.

17 MR. EDELSON: The damages that are being sought here  
18 are a specific type, and they're emotional distress damages.

19 And as we understand emotional distress damages, they  
20 can include things like humiliation, loss of reputation. That  
21 those aren't different from emotional distress damages.  
22 They're rather a subset --

23 THE COURT: So you would rather I not itemize the  
24 types of emotional distress damages in the summary of the  
25 plaintiff's claim? Because that's really where we are, is a

## Colloquy

189

1 summary of what the plaintiff's claiming.

2 MR. EDELSON: It's not that I rather you not. The  
3 proposal that I have --

4 THE COURT: Okay.

5 MR. EDELSON: -- is that on that second paragraph,  
6 the one that begins, "plaintiff also alleges."

7 THE COURT: Yes.

8 MR. EDELSON: And we move down, Damages for the  
9 emotional distress, comma -- I would add the word "including  
10 humiliation, mental anguish, and loss of reputation," et  
11 cetera.

12 That's the proposal that I had in mind. And --

13 THE COURT: That shouldn't bother the plaintiff, does  
14 it?

15 MR. JUSTIN BAXTER: No. That's fine, Judge.

16 I have an additional clause to add.

17 THE COURT: Okay. But right now "including" is being  
18 added to the fourth line of that paragraph.

19 What would you propose, Mr. Baxter?

20 MR. JUSTIN BAXTER: "Including" is fine, but we would  
21 add to the list the invasion of privacy and lost credit  
22 opportunity.

23 MR. EDELSON: Your Honor, I don't think those -- on  
24 the other hand --

25 THE COURT: I'm sorry. I didn't catch the last part

## Colloquy

190

1 of what you said. Invasion of privacy and?

2 MR. JUSTIN BAXTER: Lost credit opportunity.

3 THE COURT: I think the lost credit opportunity is  
4 actually a form of economic damage and not noneconomic damage.

5 MR. JUSTIN BAXTER: Right. The fear of the loss of  
6 opportunity to seek credit. I was using shorthand.

7 THE COURT: So what you would like to add is invasion  
8 of privacy and fear of lost credit opportunities?

9 MR. JUSTIN BAXTER: Yes.

10 THE COURT: And to that you say?

11 MR. EDELSON: I say that those are -- become subsets  
12 of some of the other ones, yet. And I think it gets too much  
13 of a fine point and becomes argument.

14 So, for example, an invasion of privacy is not in and  
15 of itself known as an emotional distress type of description.  
16 It is a reason why she's experiencing mental anguish, for  
17 example.

18 So I believe counsel would be free to argue this  
19 invasion of privacy resulted in mental anguish. But invasion  
20 of privacy is not in and of itself emotional distress.

21 THE COURT: Mr. Baxter, listening to Mrs. Miller's  
22 testimony yesterday around the issue of reputation, it struck  
23 me that she was also talking about a fear of loss of  
24 reputation, as opposed to any evidence that her reputation was  
25 actually reported back to her as being damaged.

## Colloquy

191

1           What's coming in the case, and is it really loss --  
2 actual loss of reputation? Is there some evidence that her  
3 reputation was actually diminished, as opposed to her fearing  
4 that?

5           MR. JUSTIN BAXTER: Yes, there were both. There was  
6 the fear, because she kept saying, I live in a small town. But  
7 also the actual loss of reputation because she was denied  
8 credit.

9           THE COURT: On the KeyBank event?

10          MR. JUSTIN BAXTER: Right.

11          THE COURT: Well, let me just make an observation.  
12 All of this falls under the category of actual damage in the  
13 specific form of noneconomic damages, as we know that term in  
14 Oregon; meaning not economic damages.

15          These are all examples of how one can experience  
16 emotional distress. You're distressed because you're  
17 humiliated. You're distressed because you're in anguish.  
18 You're distressed because you're fearful of what's going to  
19 happen because of the defendant's conduct. You're fearful  
20 about your privacy being invaded. And, in fact, you have had  
21 signs to you that your reputation has been harmed.

22          One way for me to resolve this here is not to give  
23 any examples here. But the problem with that is that it tends  
24 to deprive the jury of a better understanding of the summary of  
25 the plaintiff's claims, and that's really where we are.



## Colloquy

192

1           This is not a statement of law as much as it is, at  
2 this part of the instruction, a statement of what plaintiff  
3 claims.

4           So the real question is can plaintiff recover actual  
5 damages in this lawsuit for the invasion of her privacy, as she  
6 has called that, and for the fear of lost credit opportunities?

7           I ruled on summary judgment that the latter is  
8 recoverable. I don't see any point in not including that in  
9 the list here, if I'm including the others. Invasion of  
10 privacy is also such a form of noneconomic or actual damage.

11           So I -- I don't think the line should be drawn to  
12 exclude those things. It's either -- I'm either giving the  
13 examples or I'm not. They're -- none of them are erroneous, as  
14 a matter of law, that I can tell. There's evidence to support  
15 them all.

16           So tell me why that it would be erroneous, then,  
17 Counsel, for me to include these examples in the summary part  
18 of the instruction.

19           MR. EDELSON: Well, I just think as a matter of  
20 language it's not accurate.

21           It's not so much that if we are -- without regard to  
22 the -- if we assume that the -- the summary judgment decision  
23 is otherwise -- is correct, then you're right. That should --  
24 it could be in here. But I think, then, maybe it should say  
25 not -- noneconomic damages, including --

## Colloquy

193

1 THE COURT: All right. Let me propose a brief  
2 formulation of this. Rather than having one long sentence in  
3 the paragraph, let me suggest the following.

4 (Pause, referring.)

5 THE COURT: All right. I'm going to propose two  
6 sentences for this paragraph.

7 The first would be plaintiff also alleges that she  
8 was damaged as a result of defendant's alleged FCRA violations,  
9 and she seeks reasonable compensation for actual damages she  
10 suffered as a result of the defendant's allegedly wrongful  
11 conduct.

12 This includes her claim to be compensated for  
13 emotional distress, including humiliation, mental anguish, and  
14 loss of reputation, invasion of privacy, and fear of future  
15 denials of credit.

16 I think that's a fair statement of plaintiff's claim.  
17 And using the word "actual damage" is faithful to the statute.  
18 And then as we go forward, I'll try to be mindful of the  
19 references to damage to, again, track it to actual damages.  
20 We've talked about this a few times.

21 If -- and so it may just be better, all along, to  
22 just refer to this as actual damages in the form of emotional  
23 distress.

24 That includes all of these other things, versus  
25 introducing a label or substituting the label of noneconomic

## Colloquy

194

1 damages or compensatory damages because they don't necessarily  
2 track.

3 So right now I'm proposing that formulation.

4 Does that work for the plaintiff?

5 MR. JUSTIN BAXTER: It does, Judge.

6 THE COURT: Mr. Edelson, subject to the defendant's  
7 objection about the fear issue, to which you have a continuing  
8 objection because you don't agree with the summary judgment  
9 ruling, other than that, is there anything else I would need to  
10 be aware of from your --

11 MR. EDELSON: Well, just one other -- one other  
12 suggested change that Mr. Baxter and I just agreed upon, which  
13 is to remove the word "reasonable" from the first sentence.

14 THE COURT: Why?

15 MR. EDELSON: Because we don't know what they're  
16 asking for. And the risk is that it would sound as if you are  
17 characterizing their request as reasonable, as opposed to  
18 they're only entitled to reasonable.

19 THE COURT: It's in the context of a phrase that  
20 says, "She seeks reasonable compensation."

21 MR. EDELSON: I hear you. I've explained what I see  
22 as a nuance.

23 THE COURT: All right. The word "reasonable" will  
24 come in the later damages instruction.

25 MR. EDELSON: It should be in there somewhere, but it

## Colloquy

195

1 just doesn't seem like it belongs here.

2 THE COURT: If nobody cares about it being omitted,  
3 I'll take it out.

4 Most defense lawyers want the word "reasonable"  
5 everywhere compensation is referenced.

6 But okay. So this would read then, this paragraph:  
7 Plaintiff also alleges that she was damaged as a  
8 result of defendant's alleged FCRA violations, and  
9 she seeks compensation in the form of actual  
10 damages for the -- actual damages, I'm sorry, she  
11 suffered as a result of defendant's allegedly  
12 wrongful conduct. This includes her claim to be  
13 compensated for emotional distress, including --  
14 And then the list that we've talked about.

15 Okay?

16 What else on page 10, anything?

17 MR. EDELSON: Yeah, we have an agreed change in the  
18 second-to-last paragraph, last -- and --

19 THE COURT: This is the "defendant denies" paragraph?

20 MR. EDELSON: Yes.

21 THE COURT: Um-hmm.

22 MR. EDELSON: I'm trying to figure out a good way to  
23 pick up there. So if we pick up with "moreover," the second  
24 sentence there.

25 THE COURT: Yes.

## Colloquy

196

1 MR. EDELSON: Defendant contends plaintiff has not  
2 sustained any damages as a result of its conduct, and to the  
3 extent it's determined plaintiff has sustained damages, comma,  
4 we've eliminated any emotional distress or other like damages.  
5 Such damages were not caused by defendant.

6 THE COURT: Okay. I get your point. Let me see if I  
7 can --

8 MR. EDELSON: Just strike "any," up through "like."  
9 That's what we've agreed upon.

10 THE COURT: Don't you want the word "damages," to be  
11 the word "damage," in the singular?

12 To the extent it is determined plaintiff has  
13 sustained any damage --

14 MR. EDELSON: Correct.

15 THE COURT: -- such --

16 MR. EDELSON: Damage.

17 THE COURT: -- damage --

18 MR. EDELSON: Was.

19 THE COURT: -- was.

20 All right. So that's your theory, and I assume  
21 plaintiff doesn't care much about how you characterize your  
22 theory?

23 Does that work for you, Mr. Edelson, as just  
24 modified?

25 MR. EDELSON: It does. There's one other

## Colloquy

197

1 modification to that sentence.

2 THE COURT: Go ahead.

3 MR. EDELSON: Just at the end, where it says "other  
4 entities," we added in "or events."

5 THE COURT: Okay. Other entities or events.

6 And what evidence are we going to have about events?

7 MR. EDELSON: Well, there's already been evidence  
8 about events.

9 THE COURT: What is that?

10 MR. EDELSON: Ms. Miller testified about a job  
11 change, yesterday.

12 THE COURT: And what is the basis from which one  
13 could infer that she was distressed over --

14 MR. EDELSON: Because she testified that she was.

15 THE COURT: Okay. I missed that part.

16 MR. EDELSON: My -- am I correct?

17 She was --

18 THE COURT: I just missed that part. So that's fine.  
19 If plaintiff doesn't contest that addition to the paragraph,  
20 that's fine.

21 MR. JUSTIN BAXTER: That's fine.

22 THE COURT: So that sentence now will read,  
23 "Moreover, defendant contends plaintiff has not sustained any  
24 damages as a result."

25 Do you want that to be singular too, then, in that

## Colloquy

198

1 reference?

2 MR. EDELSON: Yes.

3 THE COURT: Defendant contends plaintiff has not  
4 sustained any damages as a result of its conduct. And to the  
5 extent it is determined plaintiff has sustained damage, such  
6 damage was not caused by defendant but by other entities or  
7 events.

8 Okay? That's good?

9 MR. EDELSON: Yes. Thank you.

10 THE COURT: Anything else on 10?

11 All right. What's the next area of concern?

12 MR. EDELSON: There's -- this is -- this is a  
13 recurring one. So it -- we'll start with the first claim.

14 Both counsel thought that there was an unintentional  
15 redundancy here.

16 THE COURT: Okay.

17 MR. EDELSON: And our suggested change is sort of --  
18 we kind of have to invert that first paragraph of each of these  
19 claim descriptions.

20 THE COURT: Okay.

21 MR. EDELSON: So let me see if I can walk you through  
22 how we -- we suggest that.

23 THE COURT: Okay.

24 MR. EDELSON: We would start, say, with that second  
25 sentence that begins "in her first claim."

## Colloquy

199

1 THE COURT: All right.

2 MR. EDELSON: Plaintiff alleges defendant violated  
3 Section 1681e(b) of the Fair Credit Reporting Act, period.

4 Then we would come in and say 1681e(b), states  
5 that -- and that's new language.

6 THE COURT: That?

7 MR. EDELSON: And then we go right back to the top.

8 THE COURT: To the "whenever" language?

9 MR. EDELSON: "Whenever," and take that through its  
10 period.

11 And then the rest that we -- that I didn't read would  
12 be deleted.

13 THE COURT: Yes, but it doesn't tell the jury how  
14 plaintiff contends defendant violated the act.

15 You're simply saying they -- they say they violated  
16 the act and here's what the act provides. But it never  
17 explicitly says to the jury how plaintiff contends --

18 MR. EDELSON: Well, the -- but if we read --

19 THE COURT: It's too inferential. It's not adequate.  
20 I'm not going to do that.

21 MR. EDELSON: All right.

22 THE COURT: I'm going to have to first tell the jury,  
23 first, what is the law and how plaintiff contains -- contends  
24 the law was violated. And I'm certainly happy to go along the  
25 lines you indicate, but it's not enough to say you violated



1 statute A, statute A provides X.

2 It -- you have to be specific.

3 MR. EDELSON: Well, in this paragraph -- in this  
4 claim, it stands alone as being probably the most redundant  
5 sounding because it just parrots what it said in the statute.  
6 And maybe there's a better way to put it.

7 THE COURT: Okay. How about -- let's focus for a  
8 minute on the elements, there, of -- of the first paragraph.  
9 Maybe my concern is just subsumed in the fact that the elements  
10 are there.

11 Let me ask, do you agree that the elements are  
12 correctly stated under the first claim?

13 MR. EDELSON: Yes.

14 THE COURT: Do you, Mr. Baxter?

15 MR. JUSTIN BAXTER: Yes.

16 THE COURT: Okay. Let me -- let me just think about  
17 this for a moment, please.

18 (Pause, referring.)

19 MR. EDELSON: We do have changes to No. 4, your  
20 Honor, that the parties have agreed to.

21 THE COURT: Okay. Tell me about those, first.

22 MR. EDELSON: Well, I'll just walk through the other  
23 changes here, then. I don't want to leave anything else out.

24 There's just a typo that begins, "In order to prevail  
25 on her first claim." Section 1681 needs an "e," and paren --

## Colloquy

201

1 parentheses around the (b).

2 THE COURT: Thank you. Good catch.

3 MR. EDELSON: And then -- Mr. Perling.

4 And then, No. 3, just -- this is just a preference on  
5 language that we've agreed to.

6 "In so doing," we prefer to write, "defendant  
7 negligently failed" --

8 THE COURT: Okay.

9 MR. EDELSON: -- "to follow."

10 THE COURT: Okay.

11 MR. EDELSON: Similarly, No. 4, we would all agree to  
12 just put a period after the word "damage." "Defendants allege  
13 negligence caused plaintiff to sustain actual damage."

14 THE COURT: That's fine. We're going to --

15 MR. EDELSON: I think that was consistent with our  
16 earlier discussion, anyway.

17 THE COURT: So let me just go back to the  
18 introductory paragraph in my mind, first.

19 (Pause.)

20 THE COURT: How about this.

21 "In her first claim, plaintiff alleges defendant  
22 violated" -- it should be a capital S on section -- "Section  
23 1681e(b) of the Fair Credit Reporting Act," period. "That  
24 section states that whenever a consumer" -- and then the rest  
25 of that sentence, period.

## Colloquy

202

1           Then going down to, "In order to prevail on her first  
2 claim for violation of Section 1681e(b), plaintiff must prove  
3 all of those elements," with the changes you walked me through.

4           Does that work for the defense?

5           MR. EDELSON: Yes.

6           THE COURT: And does that work for you, Mr. Baxter?

7           MR. JUSTIN BAXTER: Yes, Judge.

8           THE COURT: All right. So we need to make comparable  
9 structural changes for the others -- other claims. Right?

10          MR. EDELSON: That's exactly what we've proposed,  
11 your Honor, jointly.

12          THE COURT: So let me just take a look at the second  
13 claim.

14          (Pause, referring.)

15          THE COURT: So that first paragraph would read, then:  
16 In her second claim, plaintiff alleges defendant  
17 violated Section 1681i(a) of the Fair Credit  
18 Reporting Act, period.

19          That section states when -- that section states that  
20 when a consumer disputes. Is that right?

21          MR. EDELSON: Yes.

22          THE COURT: Mr. Baxter?

23          MR. JUSTIN BAXTER: Yes, Judge.

24          THE COURT: Okay. And then with respect to the  
25 elements on 2 -- in Element 3, we have defendant negligently

## Colloquy

203

1 failed. And Element 4, you would want, The alleged negligence  
2 caused plaintiff to sustain -- here it came up as actual  
3 damage. Previously it was actual damage. So I assume you want  
4 a period there after actual damage.

5 MR. EDELSON: Correct.

6 THE COURT: With those, are there more changes?

7 MR. EDELSON: Yeah, we've also agreed to strike the  
8 last paragraph.

9 THE COURT: All right. Please note -- Okay. Okay.  
10 So the second claim language will read:

11 In her second claim, plaintiff alleges defendant  
12 violated Section 1681i(a) of the Fair Credit  
13 Reporting Act. That section states that when a  
14 consumer disputes the completeness or accuracy of  
15 any item, the consumer reporting agency must  
16 conduct a reasonable reinvestigation of the  
17 information contained in that consumer's credit  
18 file to determine whether the disputed information  
19 is inaccurate in order to prevail.

20 And then the changes to the text are only in the  
21 fourth element, with a period after damage. The rest is  
22 stricken all the way down to the next caption, "Third Claim."

23 Is that right?

24 MR. EDELSON: Correct.

25 THE COURT: Okay. All right, then.

## Colloquy

204

1 In her third claim, plaintiff alleges defendant  
2 violated Section 1681g of the Fair Credit  
3 Reporting Act, period. That section states  
4 that -- comma -- upon a request by a consumer.  
5 So that will -- the rest of that sentence will read  
6 as it did.

7 Element 3 would be modified similarly, with a  
8 paragraph after -- I'm sorry. With a period after "actual  
9 damage" and the rest of the sentence deleted. Does that  
10 otherwise address the third claim satisfactorily for the  
11 plaintiff and defense?

12 MR. EDELSON: For defendant, yes.

13 MR. JUSTIN BAXTER: That's fine, Judge.

14 THE COURT: And so on the fourth claim, we'll follow  
15 the same pattern.

16 In her fourth claim, plaintiff alleges defendant  
17 violated Section 1681b of the Fair Credit  
18 Reporting Act. That section states that a  
19 consumer reporting agency may --

20 And we'll go to the end of that original sentence.

21 In order to prevail, Item 2, defendant negligent --  
22 how do you -- how do you rephrase Item 2?

23 MR. JUSTIN BAXTER: Judge, before we move to 2, on  
24 item 1 --

25 THE COURT: Yes.

## Colloquy

205

1 MR. JUSTIN BAXTER: -- we discussed with defendant  
2 dropping the list of the specific businesses, only because  
3 Ms. Miller testified to several others. So there may be --

4 THE COURT: All right. So you would rather have it  
5 read, then, to one or more of --

6 MR. JUSTIN BAXTER: One or more third parties.

7 THE COURT: How about to a third party?

8 MR. JUSTIN BAXTER: Okay.

9 THE COURT: Two? Or one or more?

10 Let's see here.

11 (Pause, referring.) To one or more third parties,  
12 semicolon.

13 MR. JUSTIN BAXTER: Okay.

14 THE COURT: In so doing, defendant --

15 What are you thinking here, Mr. Edelson?

16 MR. EDELSON: Well, we -- I couldn't figure out a way  
17 to make that consistent with the others. I think we'll have  
18 to --

19 THE COURT: Then I think it's correct the way it is.

20 MR. EDELSON: Leave that as is.

21 THE COURT: Because it really is a failure to act  
22 reasonably. So -- okay. We'll leave it this way, then.

23 Element 3, defendant's alleged damage caused -- I'm  
24 sorry. Alleged negligence caused plaintiff to sustain actual  
25 damage, period. And the rest gone.

## Colloquy

206

1           Okay. Now, we're on page 15. And I have formulated  
2 this as a definitional section, just so that the jury can track  
3 why it is or it isn't. I think sometimes they have trouble  
4 understanding why an instruction appears in a certain place and  
5 where it really applies. So I've been doing this more  
6 recently, just as an aid to them.

7           So any content issues, beginning on page 15, then?

8           MR. EDELSON: Unless counsel has something new, we  
9 were good up until page 17.

10          THE COURT: Okay.

11          MR. EDELSON: And that's the definition of "cause."  
12 And counsel and I do not agree on this.

13          THE COURT: Okay. So what do you propose -- well,  
14 let me ask you, Mr. Baxter. Do you agree with this definition  
15 of cause?

16          MR. JUSTIN BAXTER: Yes.

17          THE COURT: And no more?

18          MR. JUSTIN BAXTER: Correct.

19          THE COURT: You don't think any more is necessary?

20          MR. JUSTIN BAXTER: That's right.

21          THE COURT: So what am I missing, Mr. Edelson?

22          MR. EDELSON: Okay. The statute -- the damage  
23 statute gives us the -- I think all of the guidance we need,  
24 which says that damages -- you get damages that are the result  
25 of the conduct. And we think that's the language that ought to

1 be in the instruction.

2 And there's not a lot of guidance we have on this  
3 issue. There's a case out of the Ninth Circuit, **Vickie Millan**  
4 (phonetic) **versus TransUnion** case, that basically parrots that  
5 language. But it's not a holding that really helps us  
6 directly. But that's really the -- the most that we could find  
7 on the topic.

8 I think if we start getting into substantial factor  
9 tests, I think we run into trouble. And we don't think that's  
10 the right standard. And I think that could -- that certainly  
11 creates something. You know, we want to look for ways to avoid  
12 appealable issues, and I'm all for that. I think this creates  
13 a possible risk on that because I think it's the wrong  
14 standard.

15 So our proposed language is, "Defendant's conduct is  
16 a cause of damage to plaintiff if such damage was the result of  
17 that conduct," period.

18 THE COURT: Well, the problem with the result is that  
19 that's a single cause -- causal connection, meaning it  
20 precludes, in theory, any multiple causes.

21 Substantial factor is an analysis that permits a  
22 finding of causation, even if there may be other causes, as  
23 long as the one at issue was substantial in causing the result.  
24 It doesn't require ruling out any other theoretical or minor  
25 factor that also helped to cause the result.



## Colloquy

208

1           So if "the" was "a," as opposed to the article  
2 "the" -- you use the article "a," you might get to the same  
3 legal construct.

4           MR. EDELSON: In fact I misspoke, because my notes  
5 say "a."

6           THE COURT: Okay. "A cause of damage to plaintiff,  
7 if it was a" -- if it was -- wait a minute. "If it was a  
8 result."

9           MR. EDELSON: Correct.

10          THE COURT: Say it again.

11          MR. EDELSON: Let me read it from the beginning:  
12 Defendant's conduct is a cause of damage to  
13 plaintiff, if such damage was a result of that  
14 conduct, period.

15          And that comes right out of the statute.

16          THE COURT: Mr. Baxter, honestly to me that seems a  
17 little bit easier for plaintiff than substantial factor.

18          MR. JUSTIN BAXTER: I'm not sure. I never know what  
19 juries are going to do with --

20          THE COURT: Well, if all we're saying to the jury is  
21 that you have to prove that the harm she's described was a  
22 result, not the result, not the only cause, but a result,  
23 what -- what's --

24          MR. JUSTIN BAXTER: I think --

25          THE COURT: -- worrisome for plaintiff in that

## Colloquy

209

1 construct?

2 MR. JUSTIN BAXTER: I can see a juror going through  
3 the same analysis you went through before with the word "the."  
4 And I think substantial factor is the -- the standard in the  
5 Ninth Circuit and --

6 THE COURT: Well, how about we do both? How about we  
7 say the -- the defendant's conduct is a cause of damage to the  
8 plaintiff if it was the result -- if such damage was a result  
9 of that conduct. In other words, it must be a substantial  
10 factor or an important or material factor in causing the  
11 result.

12 MR. JUSTIN BAXTER: That would be fine.

13 MR. EDELSON: I think we run into the same problem.

14 I think if we try defining that the statute is to  
15 that kind of a fine point, I think we run a --

16 THE COURT: What's the difference, principally,  
17 Mr. Edelson?

18 If we're saying a result, it's -- it's -- frankly,  
19 substantial factor, to me, seems more onerous to plaintiff than  
20 what you're telling me.

21 MR. EDELSON: I don't see it the same way.

22 THE COURT: I do.

23 MR. EDELSON: And I don't know if I can articulate  
24 why.

25 THE COURT: Here's why. If something is merely a

## Colloquy

210

1 result, it can be even an insignificant result. Whereas,  
2 substantial factor has to be more than an insignificant cause  
3 by its definition.

4 So if I give what you want, the jury can find in  
5 plaintiff's favor if there is any causal connection, however  
6 slight, between the defendant's misconduct and the harm she  
7 describes. Whereas if I give what plaintiff wants, they can  
8 only find in plaintiff's favor if they find your client's  
9 conduct was a -- an important, material factor in causing the  
10 stress.

11 I think the Baxters are about to retreat from their  
12 position. I think your causation definition is less onerous  
13 for plaintiff.

14 I'm just making that observation, so I'll let you  
15 choose what position you want to take right now, once and for  
16 all, for the record. And then I'll let plaintiff take the  
17 position they want to take, once and for all, for the record.  
18 And then I'm going to make a ruling, because we need to get  
19 moving.

20 Mr. Edelson, what position are you going to take?

21 MS. SUMNER: Can we have a moment, your Honor? Would  
22 you mind just a very brief moment?

23 THE COURT: Are you about to concede their position?

24 MR. JUSTIN BAXTER: While they're conferring, the  
25 Baxters retreat from their position.

## Colloquy

211

1 THE COURT: See what I told you?

2 MR. EDELSON: You're good.

3 THE COURT: No. I just know "a" is different than  
4 material. Any factor is less than a material or important  
5 factor.

6 We need to expedite here, because I don't want to  
7 keep the jury waiting, and I know I want to get the rest of  
8 your input here.

9 MR. EDELSON: We have very little left.

10 (Pause, conferring.)

11 MR. EDELSON: Your Honor, we would stand by our  
12 request that it be defendant's conduct -- conduct is a cause of  
13 damage to plaintiff, if such damage was a result of that  
14 conduct, period.

15 And plaintiff agrees with that?

16 MR. JUSTIN BAXTER: That's fine.

17 THE COURT: That's what we'll do, then, since it's  
18 agreed to.

19 What else do I need to consider here?

20 We should read through carefully, now, the damages  
21 language, to be sure we're consistent with the original -- the  
22 change made earlier on.

23 So question 2 is captioned "actual damages." I don't  
24 think the plural is a problem there.

25 I tried, in that first paragraph under that caption,

## Colloquy

212

1 to be sure the jury understood the -- the specific unanimity  
2 issue, meaning all eight have to agree on the same violation.  
3 And I think that -- it's awkwardly phrased, but that was the  
4 best way I could do it, considering we have four different  
5 claims. So it didn't look like you were challenging any of  
6 that.

7 Where -- so you must determine the amount of any  
8 actual damages with which plaintiff proves she sustained -- so  
9 that's consistent.

10 All right. The last paragraph on page 18 starts:

11 In the context of this case, actual damages are  
12 any subjective nonmonetary losses the plaintiff  
13 sustained as a result of the defendant's wrongful  
14 conduct. Although the law does not furnish you  
15 with any fixed standard by which to measure the  
16 exact amount of actual damages, the law does  
17 require that all damages you award be reasonable.  
18 Thus, you must apply your own considered judgment  
19 to the evidence in the case in order to determine  
20 the amount of any actual damages to award. In  
21 determining the amount of such damages, consider  
22 any emotional distress, including the stress  
23 caused by --

24 Now, do we want to track back and just pick up the  
25 phraseology of the way plaintiff phrased this earlier, in the

## Colloquy

213

1 summary of the case?

2 Is that the way you would like it, Mr. Baxter?

3 MR. JUSTIN BAXTER: Yes.

4 THE COURT: I'm going to do that, and then you can  
5 have another look at the language before we -- we get -- get  
6 you locked in.

7 So I'll do that. I'll make a modification there.

8 And then I'm saying you can't award damages for any  
9 harm to the plaintiff that was caused by others. And you may  
10 not award plaintiff damages to account for her attorney fees  
11 and costs in prosecuting this case, as I will decide the amount  
12 of reasonable attorney fees and costs award, if any, depending  
13 upon your verdict.

14 So that language is there, you were concerned with,  
15 Ms. Sumner.

16 MS. SUMNER: Yes. Thank you, your Honor.

17 THE COURT: Now, with respect to punitive damages --  
18 is there anything before we get to punitive damages? No?

19 MR. JUSTIN BAXTER: No, Judge.

20 THE COURT: So my worry about the punitive damages  
21 language is that we all had various cut and paste from the  
22 model instruction, which really covers a variety of categories  
23 of bad conduct which punitive damages can be awarded. And I  
24 was worried that the cut and paste might not actually track  
25 here, because certain -- certain conduct that arises under the

## Colloquy

214

1 model instruction is conduct for -- like personal harm to  
2 someone, hurting someone, something that harms the -- the --  
3 the public welfare. And that's usually been understood to  
4 mean -- for example, in the tobacco cases, the public health  
5 and welfare component.

6 So I just want to be sure that whatever I tell the  
7 jury is something you all have thought through and agreed to  
8 and is correct. And I'm not sure the cut and paste I have here  
9 is the way it ought to be.

10 So let me read it out loud to you, and see what it  
11 sounds to you as we go.

12 The purposes of punitive damages are to punish a  
13 defendant and to deter a defendant and others  
14 similarly situated from committing similar acts in  
15 the future. You may award punitive damages only  
16 if you find that defendant's conduct that harmed  
17 plaintiff was malicious, oppressive, or in  
18 reckless disregard of the plaintiff's rights.

19 Now, really, I'm understanding plaintiff's claims to  
20 be a reckless disregard claim. And if that's true, we don't  
21 need to worry about talking about malice, or oppression, or  
22 defining it.

23 What, Mr. Baxter, is your view, since it's your claim  
24 first.

25 MR. JUSTIN BAXTER: That's correct. We would --

## Colloquy

215

1 THE COURT: You would propose to take out the  
2 "malicious, oppressive" language, and simply focus on reckless  
3 disregard?

4 MR. JUSTIN BAXTER: Yes.

5 THE COURT: That would narrow the focus for the  
6 defendant. I assume that will be acceptable.

7 MR. EDELSON: No, to the contrary. We think it  
8 dilutes the significance of punitive damages, and the kinds of  
9 things that rise to that level.

10 You know, we can't have a situation where they're  
11 giving out punitive damages like candy here. This is -- it's a  
12 very serious thing. It should only be awarded in the most  
13 egregious situations. And so there might be other language  
14 that we can use that captures that, but --

15 THE COURT: Here's what I think should happen. I  
16 think the word "oppressive" should come out. Because the  
17 oppressive category has to do with the civil rights kinds of  
18 violations and the harm to the personal rights of people, as  
19 opposed to a consumer economic right. And the definition of  
20 "oppression" is actually one, I think, I already deleted. But  
21 I don't have a problem using the word "malicious," because it  
22 does encompass the notion of ill will.

23 So let's try on this idea.

24 You may award punitive damages only if you find  
25 that defendant's conduct that harmed plaintiff was



## Colloquy

216

1           malicious or in reckless disregard of the  
2           plaintiff's rights, but you may not award punitive  
3           damages if you find that the defendant's conduct  
4           was merely negligent.

5           Conduct is malicious if it is accompanied by  
6           ill will or spite or if it is for the purpose of  
7           injuring the plaintiff.

8           Honestly, I'm not sure there's any evidence in the  
9           case from which that finding could be found. And if I was the  
10          defendant, I would be moving against that language because  
11          it -- it actually invites the jury to consider something for  
12          which I don't think there's evidence. So I'm going to want to  
13          think about that more.

14          But we'll go on to "the conduct is in reckless  
15          disregard" phrase.

16          It is that: "If under the circumstances,  
17          defendant acts in the face of a perceived risk  
18          that its actions will violate the plaintiff's  
19          rights under the Fair Credit Reporting Act" -- and  
20          then the omission language would be out.

21          Is that a correct definition of "reckless disregard,"  
22          Mr. Baxter?

23          MR. JUSTIN BAXTER: Yes, Judge.

24          THE COURT: Is it your position I should only be  
25          talking about reckless disregard?

## Colloquy

217

1 MR. JUSTIN BAXTER: Yes.

2 THE COURT: I'm actually going to take out the  
3 language right now about malice because of my supposition that  
4 the rest of the case is going to be consistent with the  
5 following. There won't be evidence there was actual ill will  
6 directed to the plaintiff, or spite, or something that was  
7 directed to her to purposefully injure her, consistent with  
8 Ms. Sumner's opening statement.

9 This was a set of transactions by a company that has  
10 responsibility for multi-million transactions. It wasn't  
11 personal. It wasn't about the plaintiff personally. It was  
12 about a process.

13 And so I don't see that there's any factual  
14 foundation, unless plaintiff's going to change the record for a  
15 finding of ill will. And a punitive damage award that entered  
16 here, with that direction, could be set aside for lack of  
17 evidence after the fact. And I -- I'm just not going to be  
18 party to that.

19 So you need to give me some basis from which a jury  
20 could find there was actual malice directed toward the  
21 plaintiff.

22 Or give me some other language you want me to  
23 consider later, but not now.

24 I'm just -- I'm working on this.

25 MR. EDELSON: All right. We'll -- we'll provide some

## Colloquy

218

1 language for you.

2 THE COURT: Is there anything else we need to fuss  
3 with at the moment?

4 MR. JUSTIN BAXTER: Just one last citing, Judge. On  
5 the punitives instruction, we would ask for a sentence that the  
6 jury may consider the net worth of Equifax.

7 THE COURT: Okay. Any objection to that?

8 MR. EDELSON: No.

9 THE COURT: Okay. We'll put that in.

10 We'll generate a third draft. We'll work from that,  
11 just so that we continue to make progress. Okay?

12 MR. EDELSON: Thank you, your Honor.

13 THE COURT: So would you do that?

14 (Pause, Court and law clerk conferring.)

15 (Recess taken.)

16 (Jurors enter.)

17 THE COURT: All right. Thank you, everyone. Please  
18 be seated, except for you, Mr. Miller.

19 I need you to stand, please. Face the jury, raise  
20 your right hand to be sworn.

21 (Witness sworn.)

22 THE WITNESS: I do.

23 THE CLERK: Please take a seat.

24 THE COURT: And, jurors, before Mr. Miller identifies  
25 himself, let me say good morning to you. Thank you for

Rick Miller - D

219

1 returning. We appreciate that.

2 I want to apologize that we didn't start with you  
3 at -- at nine o'clock. I had some work I had to do with  
4 counsel outside your presence. We try hard to be prepared  
5 ahead of time and keep that to a minimum, but we just needed to  
6 do that.

7 So we are ready now to continue with the plaintiff's  
8 next witness.

9 Sir, would you come close to the microphone there.  
10 Tell us your full name, and spell it all, please.

11 THE WITNESS: It's Rick Steven Miller. It's R I C K,  
12 S T E V E N, M I L L E R.

13 THE COURT: Thank you.

14 Counsel.

15 MR. MICHAEL BAXTER: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. MICHAEL BAXTER:

18 Q. Mr. Miller, what is your relationship to Mrs. Miller?

19 A. Her spouse.

20 Q. And how long have you been married?

21 A. Be 32 years this November.

22 Q. And what do you do for a living?

23 A. I'm a customer service manager for Hard Time Glass  
24 Company.

25 Q. Can you tell me briefly about your wife?

Rick Miller - D

220

1 A. Well, been my best friend for 34 years. She's probably  
2 the -- the best multi-tasker that I've ever met. She can have  
3 several different things going on at the same time and manage  
4 them well. Been a great mother of two grown men. And that's  
5 pretty much it.

6 Q. Okay. And what does good credit mean to you, and your  
7 family?

8 A. Well, Julie's family and -- her parents and both of my  
9 parents were Depression children and grew up during the  
10 Depression, and kind of instilled into both of us the fact that  
11 savings is everything, you know. And don't dip into your  
12 savings, because you never know what's going to come around the  
13 next corner. So having good credit and the ability to use that  
14 at any given time is very important to both of us.

15 Q. And were you involved in assisting her in trying to  
16 correct her Equifax report?

17 A. Julie and I discussed it. I didn't really -- I didn't  
18 really do anything directly, write anything. That was her  
19 obligation to do so.

20 I was there for her when she had questions, and to  
21 comfort her. Because she was pretty -- she was pretty  
22 distressed that this was coming back at us.

23 Q. And were you there when she would get the responses from  
24 Equifax to her disputes?

25 A. Yes, I was.

Rick Miller - D

1 Q. When she received her original January 18, 2010, credit  
2 report, do you remember the conversation?

3 A. I remember Julie saying that she couldn't believe that  
4 this came, and the extent of it. My gosh, it was like five  
5 pages long of disputes that none of them belonged to us.

6 I remember her also saying that -- but based on the  
7 information at the top of the report -- that it should be a  
8 pretty easy, quick fix. Because the date of birth, Social  
9 Security wasn't even close to being a match. So we figured,  
10 hey -- you know, she figured she would put the document  
11 together, dispute it, and it would go away.

12 Q. When -- as she received these responses of Equifax, did  
13 her personality change, as -- as she received more responses?

14 A. As -- (laughing.) As we got further into it and started  
15 getting the same thing over and over again, yeah. She --  
16 she -- like I said before, she multi-tasked very well and  
17 handles that type of thing very well. She gets very disturbed  
18 and distressed when she has something that she has no control  
19 over. And, unfortunately, this was something that we had no  
20 control over. We could dispute it. But they -- I mean, we  
21 didn't hire these people. We couldn't fire these people. They  
22 were putting our information out to other industries that --  
23 that didn't belong to us, and it was very, very disturbing.

24 Q. Did her demeanor change over that period of time?

25 A. It did somewhat. She -- little things that -- that you

Rick Miller - D

222

1 call irritants in life, usually you just blow off, became  
2 bigger; bigger issues. Arguments that normally would be passed  
3 over took place. And you could just tell -- you know, when  
4 you've been married to somebody for 32 years, you can kind of  
5 tell it just by their actions and their day-to-day facial  
6 expressions.

7 She doesn't wear her emotions much on her sleeve,  
8 where you can't just walk up. But if you've been around her as  
9 long as I have, you can tell she was really being -- a lot of  
10 irritation, frustration over this whole matter.

11 Q. Did you notice any significant change in 2011 from the  
12 responses Equifax was giving her?

13 A. She was at the point -- she was kind of at the point where  
14 she was -- felt that she was backed into a corner. There  
15 was -- you know, she had done everything that -- oh, I am  
16 totally sorry about that. (Pause, phone ringing.)

17 THE COURT: Good reminder to everyone who has a  
18 device in the room, please check to turn them off.

19 Ask the question again, please.

20 THE WITNESS: I apologize, your Honor, for that.

21 THE COURT: Sure.

22 THE WITNESS: Sorry.

23 MR. MICHAEL BAXTER: Do you want me to go ahead?

24 THE COURT: Ask the question again, please.

25 BY MR. MICHAEL BAXTER:

Rick Miller - D

223

1 Q. Yes. Do you remember if there was any changes in 2011,  
2 when she received the Equifax response?

3 A. Yes. This was when she -- I mean, she was really, really  
4 frustrated, felt like she had been boxed into a corner, no way  
5 to get out. She felt trapped. I mean, totally trapped. Had  
6 done everything that had been asked of her, and still receiving  
7 the same reports over and over again.

8 I don't know if anybody's ever seen the movie with  
9 Bill Murray in it, where he keeps coming back the same day.  
10 That's how she felt. Doing the same thing over and over, and  
11 getting the same result back. Just really infuriated her.

12 Q. Did you speak with your wife about her credit reporting  
13 disputes in 2011, when she was attempting to fix her credit  
14 report?

15 A. Yes.

16 Q. And tell us about those conversations.

17 MR. PERLING: Objection, your Honor, hearsay.

18 THE COURT: Be specific as to a form of the question,  
19 please, so that it calls for only Ms. Miller's then-existing  
20 state of mind, as opposed to relating a conversation which does  
21 go beyond the admissibility rules.

22 Having a conversation is not what the witness is  
23 permitted to do here. He can reflect upon her then-existing  
24 state of mind, and you can ask questions around that.

25 BY MR. MICHAEL BAXTER:



Rick Miller - D

224

1 Q. What was her state of mind during that -- that particular  
2 period when she's receiving these responses from Equifax in  
3 2011?

4 A. Well, again frustration, lost, misdirected.

5 I've never seen her like that before. I mean, she is  
6 a very strong-willed person. Again, multi-tasks well.

7 She was just -- she didn't have any answer. She  
8 couldn't get the thing fixed, and she just felt trapped.

9 Q. Did you observe any physical changes in her?

10 A. She had gone through a period where -- the biggest thing I  
11 remember is that she was having acne issues, which I've never  
12 seen her have before. And she -- her hair was thinning --  
13 falling -- her hair was actually falling out through a period.

14 I could just tell she was under a great deal of -- of  
15 distress and emotional pressure. Never seen her like that  
16 before. Never.

17 Q. Now, were you and your wife intending to use credit in  
18 2011 and 2012?

19 A. Yes.

20 Q. And what were you intending to do?

21 A. Julie's dad -- well, just a little history on that.

22 Julie's dad had a nice shop down at his house. One of the  
23 things, when I first met Julie, she said, Someday I want to be  
24 able to build you something like that. It's kind of a sense of  
25 community for family and friends, to be able to kind of come to

Rick Miller - D

225

1 the shop and build things and do projects, and just sit around  
2 and do nothing. She wanted to do that for me.

3 And because of the -- of the credit issues, we were  
4 afraid -- or she was afraid that if we applied, that we would  
5 be rejected.

6 We had been -- she had been rejected before on a  
7 couple of issues that I had ended up going in and signing for  
8 some things. But -- so we put it off.

9 Q. Did you eventually begin the building of this shop?

10 A. Not as a present -- presently, we are getting bids on the  
11 project, and hope to start breaking ground sometime late fall  
12 this year.

13 Q. Do you remember -- did -- observing her when these plans  
14 had to be postponed?

15 A. She was -- she was upset, as I was, as well. We were  
16 going to take advantage of -- of -- both labor and building  
17 materials at that time were at an all-time low. So we thought  
18 we were going to be able to build a really nice shop for a lot  
19 less money. Of course, the bids are coming in now, and labor  
20 is up and materials are up, so we lost that opportunity.

21 Q. And is there any other things that you and your wife put  
22 off?

23 A. I mean, there's -- none that really comes to mind. I  
24 mean, there's always your day-to-day things that you want to  
25 do, and --

Rick Miller - D

226

1 Q. Did you want to refinance your home?

2 A. Yes, we did do that. That was -- again, that was put off  
3 for a couple of years by doing that. We have recently done  
4 that. However, again, with the credit reports that were coming  
5 through, we just felt that we just couldn't go to our bank  
6 and -- and go through the -- the embarrassment of being turned  
7 down.

8 We come from a very small community, and everybody  
9 kind of knows everybody. And the people that you deal with  
10 in -- business-wise, on a day-to-day basis are people you see  
11 all the time. And it's embarrassing and humiliating when you  
12 get turned down on something when you know that it's not even  
13 your fault that it's happening.

14 Q. Do you recall observing her when she received her denials  
15 of credit from KeyBank?

16 A. Yeah, she was very upset. You know, very upset.

17 Q. Would you explain that to the jury?

18 A. She prides herself on -- on keeping good credit and just  
19 being a good overall person. And the embarrassment of having  
20 people that we see and know and do business with having to find  
21 out that -- that we have bad credit, she's worried about people  
22 thinking that in a small community, you know, people don't pay  
23 their bills, they're deadbeats. But, you know, being prominent  
24 people in the community and as active as she is, that's a  
25 really -- that's a real concern. She was really concerned

Rick Miller - D

227

1 about that.

2 Q. And where did she -- what branch did she apply --

3 A. It was the Hubbard branch, which is just the adjoining  
4 little town next to Aurora.

5 Q. Is that the branch that you bank at?

6 A. Yes, it is.

7 Q. When your wife would see -- received the numerous response  
8 letters from Equifax, did you observe her reaction, and can you  
9 tell that reaction to the jury?

10 A. She was infuriated. I mean, something as simple as we  
11 thought that it was, or as she thought that it was, just being  
12 mixed with a different Social and a different date of birth,  
13 that it should have been an easy fix for anybody. She couldn't  
14 understand why people couldn't just put one here and one here  
15 and see, obviously, that they're different, and fix it.

16 And the constant denials and the constant re-asking  
17 for, you know, the same information, over and over again, was  
18 just -- really infuriating to her. She was really mad.

19 Q. Did your wife ever discuss a fear of her identity being  
20 stolen during this time?

21 A. Constantly.

22 If you look at the bottom of Equifax's letters asking  
23 for more information, they actually reinforce that -- that --  
24 that thought, at the bottom of their page.

25 So, yeah, it was always a concern.

Rick Miller - X

228

1 MR. MICHAEL BAXTER: That's all the questions I have  
2 for Mr. Miller.

3 THE COURT: Thank you. Cross.

4 CROSS-EXAMINATION

5 BY MR. PERLING:

6 Q. Mr. Miller, you're aware that your wife sued TransUnion?

7 A. Pardon me?

8 Q. You're aware that your wife sued TransUnion?

9 A. Yes.

10 Q. And you're aware that your wife sued Experian?

11 A. Correct.

12 Q. She was having problems with those companies mixing her  
13 with another consumer. Right?

14 A. I believe so.

15 Q. And they caused her stress?

16 A. I don't know if they did or not, to be honest with you. I  
17 mean, it wasn't nearly at the -- that -- at the level that  
18 we're dealing with right now.

19 Q. Well, if she admitted that -- yesterday, that they caused  
20 her stress, you wouldn't have any reason to disagree with her,  
21 would you?

22 A. Well, I wasn't privy to that testimony. So --

23 THE COURT: Excuse me. Counsel, don't ask a witness  
24 to comment on another witness's testimony.

25 MR. PERLING: Yes, your Honor.

Rick Miller - ReD

229

1 THE COURT: All right. Go ahead.

2 BY MR. PERLING:

3 Q. TransUnion and Experian caused her frustration as well,  
4 didn't they?

5 A. I would believe that -- somewhat, yes.

6 Q. Plaintiff settled those lawsuits, your wife?

7 A. My understanding is correct, yes.

8 Q. She didn't tell anyone that she had been denied credit at  
9 KeyBank; any of her friends, did she?

10 A. I wouldn't know that.

11 MR. PERLING: Those are my questions, thank you.

12 THE COURT: Redirect.

13 MR. MICHAEL BAXTER: Yes.

14 THE COURT: Go ahead.

15 REDIRECT EXAMINATION

16 BY MR. MICHAEL BAXTER:

17 Q. By the time the episode -- or the issues with Equifax  
18 arose, was the TransUnion and Experian issue basically  
19 resolved?

20 A. To my knowledge, that's correct.

21 MR. MICHAEL BAXTER: No other questions.

22 THE COURT: All right, sir. Thank you. You may step  
23 down.

24 Next witness.

25 And is there any objection to Mr. Miller staying in

Bauer - D

230

1 the courtroom now? Mr. Perling?

2 MR. MICHAEL BAXTER: Not for me.

3 THE COURT: Mr. Perling, is there any objection to  
4 Mr. Miller remaining in the courtroom, if he chooses?

5 MR. PERLING: No, your Honor.

6 THE COURT: All right. Sir, you can stay in the  
7 room, if you would like.

8 THE WITNESS: Thank you.

9 THE COURT: All right. Would you come forward here,  
10 please, to the witness chair. Please walk all the way up to  
11 the chair. Remain standing.

12 Face the jury there. Raise your right hand to be  
13 sworn.

14 (Witness sworn.)

15 THE WITNESS: Yes, I do.

16 THE CLERK: Please take a seat.

17 THE COURT: And when you're situated there, bring  
18 yourself close in to the microphone there, as close as you can.

19 Tell us your full name, and please spell all of it.

20 THE WITNESS: Sheryl Anne Bauer.

21 That's S H E R Y L, A N N E, B A U E R.

22 THE COURT: Thank you.

23 Counsel.

24 MR. MICHAEL BAXTER: Thank you, your Honor.

25 DIRECT EXAMINATION

1 BY MR. MICHAEL BAXTER:

2 Q. Ms. Bauer, where do you live?

3 A. I live in Keizer, Oregon.

4 Q. What do you do for a living?

5 A. I am the director of facility services for a company that  
6 builds, owns, and operates retirement communities.

7 Q. And what is your relationship to Mrs. Miller?

8 A. A good friend.

9 Q. Can you tell me briefly about Ms. Miller?

10 A. Well, Julie, Ms. Miller and I grew up together. We became  
11 friends when we were freshman in high school, back in 1970.  
12 And we have been friends ever since. And we've raised our  
13 families together. We've gone on vacation together. We've  
14 just remained really good friends since 1970.

15 Q. And how often do you see her?

16 A. About every two to three months, in person, yeah.

17 Q. And what's the basis for your getting together?

18 A. We get together and we have dinner and we do girl talk.

19 Q. Now, during the times that you were seeing her in the last  
20 few years, tell us your observations of when she spoke about  
21 her problems with the credit report.

22 A. Well, when she first brought it up, she was telling us the  
23 problems -- and this has been -- and it's our other friend --  
24 there's three of us that go to dinner every two to three  
25 months, and we're all high school friends and have remained



1 friends.

2 And the first time she brought it up, it was  
3 probably -- I would say four -- four years ago, she brought it  
4 up at dinner, and said, you know, I need to tell you what's  
5 going on in my life.

6 And so she started telling us about -- that she had  
7 another person, named Julie Miller, that had gotten -- that was  
8 very bad and had done a lot of very bad things with regard to  
9 her credit, and how all of these -- what this other person had  
10 done had gotten onto her credit report.

11 MR. EDELSON: Your Honor, I'm going to object on  
12 hearsay grounds.

13 THE COURT: So the same issue here, Mr. Baxter. The  
14 witness needs to be directed to speak in terms of her  
15 observations of the then-existing mental --

16 THE WITNESS: Oh.

17 THE COURT: -- mental impressions of the witness.  
18 It's not your fault. It's a natural tendency.

19 THE WITNESS: Oh, sorry.

20 THE COURT: So just listen to Mr. Baxter's question.  
21 Just please listen to his question and answer what he's asking,  
22 and he'll focus.

23 THE WITNESS: I'm sorry.

24 BY MR. MICHAEL BAXTER:

25 Q. Yes. Can you tell us your impression -- the existing

1 impressions of her when -- as she's relating these problems to  
2 you?

3 A. Okay. Yes, she was very upset. She was trying to figure  
4 out what to do. She was distraught. She was concerned. She  
5 was somewhat embarrassed. You know, wringing her hands. You  
6 know, just saying, I am not sure what to do. I'm not sure  
7 what -- where to go. I'm starting to work on this. I've  
8 been --

9 MR. EDELSON: Your Honor, hearsay.

10 THE WITNESS: Okay. Sorry.

11 THE COURT: Overruled.

12 This is a fair version of a lay opinion about how the  
13 witness presented her mental state.

14 What she can't do is just relate a back-and-forth  
15 conversation. That is hearsay.

16 MR. EDELSON: Thank you.

17 THE COURT: Go ahead, Counsel.

18 BY MR. MICHAEL BAXTER:

19 Q. Do you remember if she ever discussed specific lending  
20 institutions?

21 A. I don't remember her saying any specific lending  
22 institution, no. She just said it was a credit -- credit  
23 issues, a credit company.

24 Q. And what's the time frame that you were observing her in  
25 these conversations?

1 A. Well, the time frame would have been over dinner, each  
2 time we met. And we usually talk a lot, and it's probably a  
3 three -- two- to three-hour time frame.

4 Q. And what dates? I'm looking for --

5 A. Oh, I haven't kept specific dates. You know, it's every  
6 two to three -- every two to three months, for the last --  
7 well, if we're talking in the time frame of talking about this  
8 incident, in particular, it's been over the last four years,  
9 every two to three months when we get together for our dinners.

10 Q. Was this a routine point of conversation that she would  
11 bring up?

12 A. It would come up on many occasions. Many occasions. I  
13 don't think it came up every single dinner, because there were  
14 times, I think, that it was probably not at the forefront right  
15 at that moment in time. But it came up numerous times.

16 Q. Do you remember any other observations of her when she was  
17 telling about credit reporting problems?

18 A. Bags under her eyes, losing sleep over it, hair -- she was  
19 talking about having problems with her hair falling out. Those  
20 were the main things. Observations of -- of her.

21 Q. Did she ever discuss an issue with confidential  
22 information?

23 A. Yeah, she mentioned an issue -- it was -- something with a  
24 hospital. I think it was a hospital that this other Julie  
25 Miller had been at. And the hospital apparently sent some

Bauer - D

235

1 confidential information on the other Julie Miller to this  
2 Julie Miller.

3 And she said that she called the hospital -- I think  
4 she called the hospital and said, you know, This is HIPAA. I  
5 mean, this is HIPAA violations. I guess -- okay. I can --

6 MR. EDELSON: (Standing.)

7 THE COURT: It's not -- hold on a minute. Counsel is  
8 on his feet.

9 Let me just try to -- and your implied objection is  
10 sustained.

11 We need the witness asked questions about her  
12 observations of the plaintiff's mental state or the reaction  
13 she was having to this ongoing problem.

14 It's okay, Ms. Bauer, for you to quote Ms. Miller to  
15 illustrate a point. But what we can't do is simply have you  
16 relate a back-and-forth conversation.

17 THE WITNESS: Okay. Sorry.

18 THE COURT: So go ahead, Mr. Baxter, if there's more  
19 around that.

20 MR. MICHAEL BAXTER: Sure. No.

21 BY MR. MICHAEL BAXTER:

22 Q. Were there conversations between you and -- about how to  
23 correctly make her dispute to Equifax?

24 A. Yes.

25 Q. Can you tell what her -- her mental state and reaction was

1 when you were talking about that issue?

2 A. Well, she was very attentive, and -- and wanted to make  
3 sure that she was doing the right thing and -- she was  
4 attentive, and listening, and wanting -- you know, wanting to  
5 make sure that -- you know, we were trying to give her good  
6 advice, to begin with, so that she could get her problem  
7 resolved. So she was very attentive, diligent in wanting to  
8 make sure she was doing the right thing.

9 MR. MICHAEL BAXTER: That's all the questions I have.

10 THE COURT: Thank you. Cross.

11 MR. EDELSON: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. EDELSON:

14 Q. Good morning, Ms. Bauer. I'm Jeff Edelson, and I  
15 represent Equifax here. And I just have a few follow-up  
16 questions for you.

17 Now, I assume that you have been prepared to testify  
18 today. That Ms. -- one of the Baxters spoke to you about your  
19 expected testimony?

20 A. That's correct.

21 Q. And you have spoken to Ms. Miller, and others, between the  
22 time of the conversations that you related today and -- and  
23 today. So you have had additional conversations in addition to  
24 what Mr. Baxter was asking you about?

25 A. Not since -- we have not spoken about this in particular

1 since I spoke with Mr. Baxter.

2 Q. Okay. Great.

3 So what I want to make sure we do is I -- I don't  
4 want you to be testifying about what you've learned since those  
5 events you discussed, but just what happened at those events.  
6 Okay?

7 A. Um-hmm.

8 Q. All right. Thank you.

9 Did you know, back during those conversations, that  
10 there were three major credit reporting agencies in the  
11 country?

12 A. No.

13 Q. Did you know that there was TransUnion and Experian and  
14 Equifax?

15 A. No.

16 Q. Did you know, during those conversations, whether  
17 Ms. Miller's issues were with TransUnion or Equifax or  
18 Experian, or all of them?

19 A. No, I -- I didn't know.

20 Q. And did you know -- for example, did she tell you that she  
21 sued Experian?

22 A. No, she did not.

23 Q. Did she tell you that she sued TransUnion?

24 A. No.

25 Q. Now, she has testified about her fear of her reputation

1 being harmed. And I'll just tell you that because it's -- it's  
2 in a context.

3 Did you and your friends and Ms. Miller's friends  
4 ever think less of her as a result of this information that she  
5 was sharing with you?

6 A. I have been a good friend of hers since 1970, and I know  
7 her inside and out, and I know her character. And, no, not  
8 personally myself.

9 Q. Of course, not. And, in fact, I would assume, then, that  
10 your admiration actually probably grew because of her  
11 willingness to fight on this issue?

12 A. I -- I -- I -- yeah. I -- very proud of her for -- for  
13 doing the right thing, absolutely, and sticking up for herself.  
14 Absolutely.

15 Q. You're a good friend?

16 A. I am a good friend.

17 Q. And you don't know anyone who ever thought less of  
18 Ms. Miller because of this mixed-up credit report, do you?

19 A. I don't personally know of anybody, no.

20 Q. And when she described her upset, you and her other  
21 friends were comforting to her. Right? Supportive?

22 A. Supportive, absolutely.

23 Q. And during this time period, you didn't observe that  
24 Ms. Miller neglected her family?

25 A. Personally observing her neglecting her family, no. I

1 can't say I personally observed her neglecting her family.

2 Q. But you don't have any reason to think that she -- she --  
3 because of the issues she was dealing with, that somehow she  
4 became a less-attentive wife or a less-attentive mother?

5 A. I have no idea. I -- I can speculate that there were a  
6 few things falling through the cracks on many levels for her.

7 Q. But that would be speculation?

8 A. That would be speculation on my part.

9 Q. She remained active in the community?

10 A. Yes.

11 Q. You testified about issues of her hair or sleep.

12 That's -- those are -- that's information that  
13 Ms. Miller gave you. Correct? You didn't observe that  
14 personally?

15 A. Oh, I absolutely -- well, I observed her hair falling out,  
16 and I observed bags under her eyes; which would connote a  
17 lack of sleep.

18 Q. But the diagnosis that one -- that the problem she was  
19 having with her credit report had anything to do with the  
20 other, you're not qualified to tell us that?

21 A. I'm not qualified. I'm not a doctor.

22 Q. Right. And so your testimony about that was simply what  
23 Ms. Miller was telling you?

24 A. And -- and what I was observing.

25 MR. EDELSON: All right. I have nothing else.



Bauer - ReD

240

1 Thank you.

2 THE COURT: Redirect, if any.

3 REDIRECT EXAMINATION

4 BY MR. MICHAEL BAXTER:

5 Q. Sure. Did you observe any escalation in her stress from  
6 2010 to 2011?

7 A. Absolutely. Absolutely.

8 You know, she just would be talking quite a bit, you  
9 know, when we would have our dinners, and there would be stress  
10 in her voice. And the observation, again, of the bags under  
11 her eyes and -- and the hair thinning. And that's -- that's  
12 what I observed.

13 MR. MICHAEL BAXTER: Thank you. That's all the  
14 questions that I have.

15 THE COURT: All right. Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: You're free to go, Ms. Bauer.

18 Next witness, please.

19 Would you please come forward here to the witness  
20 chair. Please come all the way up the stairs.

21 Good morning.

22 THE WITNESS: Good morning.

23 THE COURT: Please remain standing. Face the jury  
24 and the deputy there. Raise your right hand to be sworn.

25 (Witness sworn.)

Fox - D

1 THE WITNESS: I do.

2 THE CLERK: Please take a seat.

3 THE COURT: Please bring yourself close into the  
4 microphone there, when you're settled.

5 Tell us your full name, and spell all of it, please.

6 THE WITNESS: My name is Karen Fox. K A R E N,  
7 F O X.

8 THE COURT: Thank you.

9 Counsel.

10 MR. MICHAEL BAXTER: Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MR. MICHAEL BAXTER:

13 Q. Ms. Fox, where do you live?

14 A. I live in Lake Oswego.

15 Q. And what do you do for a living?

16 A. I'm a nurse. I'm a registered nurse, and I own a company  
17 called Medical Resource Network, where I'm the president.

18 Q. And do you know Ms. Miller, the plaintiff in this case?

19 A. I do.

20 Q. And what is your relationship with Ms. Miller?

21 A. We went to high school together, and we've been friends  
22 ever since.

23 Q. And how often do you see Ms. -- see her?

24 A. Probably every several months. Julie is a dermatology  
25 nurse, and so I see her as a nurse, as well as a friend.

Fox - D

1 Q. And what's the circumstances that cause you to get  
2 together?

3 A. Oh, girl talk. We get together and have a cocktail, and  
4 visit about our kids. And -- and then I do see her in the  
5 office, from time to time. As I said, she is a derm -- derm  
6 nurse, too.

7 Q. Could you briefly describe the type of person Ms. Miller  
8 is.

9 A. Julie is a very solid citizen. She's a volunteer  
10 extraordinaire. She has served on so many committees and  
11 nursing associations, and I think currently she's the chair of  
12 her local school board.

13 Q. And from your observations of her, have you come to find  
14 that she values good credit?

15 A. Absolutely.

16 Q. Do you remember any specific instances when the credit  
17 issue came up in the last few years?

18 A. I can remember Julie expressing frustration about the  
19 credit companies, and not being able to do what she had wanted  
20 to do. I know that she tried to -- wanted to sign an apartment  
21 leasing -- or loan and wasn't able to for her son. And she  
22 just expressed a lot of frustration. And, you know, she was,  
23 like, you know, what am I going to do? And there was  
24 embarrassment on her part because of that.

25 Q. Did you ever observe her when she was discussing the

Fox - X

1 specific types of problems that she was having with her credit  
2 report?

3 A. Yes. From time to time she would express a lot of  
4 frustration and, you know, some anger and embarrassment.

5 Just like, can you -- you know, can you believe this  
6 is still happening? And that was observed over a period of  
7 time.

8 Q. Do you recall any observations of her when she was talking  
9 about her son in relation to this credit issue?

10 A. Yes. I believe she expressed, you know, quite a bit of --  
11 just sorrow and embarrassment that she wasn't able to do what  
12 she wanted to do for her son with regards to his living  
13 situation for college.

14 MR. MICHAEL BAXTER: Okay. That's all the questions  
15 I have.

16 THE COURT: Thank you.

17 Cross.

18 MR. EDELSON: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. MICHAEL BAXTER:

21 Q. Hi, Ms. Fox. I'm Jeff Edelson, and I represent Equifax.  
22 And I just have a few follow-up questions for you.

23 What type of nurse did you say you were? What's your  
24 specialty?

25 A. I'm a legal nurse consultant.

Fox - X

1 Q. What does that -- what does a legal nurse consultant do?

2 A. We review documents and do preparation -- litigation  
3 preparation.

4 Q. For malpractice lawsuits against doctors?

5 A. Um-hmm. (Nods head.)

6 Q. And did you make any observations about Ms. Miller that --  
7 during the time that you had these discussions about credit  
8 companies? Was she drinking more?

9 A. No, Julie doesn't drink very much.

10 Q. You didn't see a change in that, did you?

11 A. Not that I recall.

12 Q. Did you see a change in her interest and enthusiasm and  
13 availability to volunteer and continue to be a solid citizen,  
14 as she was?

15 A. I didn't observe a change.

16 Q. Did your opinion of her change in any respect? Did you  
17 think less of her as a result of these credit problems she was  
18 having with the credit companies?

19 A. No, I did not think less of her. I thought less of the  
20 credit companies, though.

21 Q. So did you know, back then, who the credit companies were?

22 A. No.

23 Q. Did you know there were three major credit companies?

24 A. I knew that in -- as far as my general knowledge that  
25 there are three companies.

Fox - Offer of Proof

245

1 Q. And you knew she was having problems with all three?

2 A. I didn't know the specifics.

3 Q. Do you know Ms. -- I'm going to get into some bit of  
4 delicate questions. I apologize. But there's been some  
5 testimony that I want to make sure we address.

6 MR. EDELSON: Your Honor, I wonder if we could have a  
7 moment on this issue. I -- something we didn't anticipate.  
8 But there is something we can discuss before I go into an area  
9 with this witness.

10 THE COURT: Jurors, would you mind stepping out,  
11 please, while I take up this matter outside your presence.

12 Why don't you take this as a quick opportunity for an  
13 early break, but we'll have you right back.

14 Thank you, everyone, for standing for the jurors.

15 (Jurors exit.)

16 THE COURT: Yes, Mr. Edelson.

17 MR. EDELSON: If I may request, I would like the  
18 witness excused while we discuss this issue, as well.

19 THE COURT: Why don't you just make an offer of  
20 proof. Ask the questions that you propose to ask, then I'll  
21 know what the answers are going to be, and then we can discuss  
22 it.

23 Go ahead.

24 OFFER OF PROOF

25 BY MR. EDELSON:

1 Q. Ms. Fox, how old is Ms. Miller?

2 A. 57.

3 Q. And are you familiar with -- let me ask you this.

4 Do you know any of the symptoms of menopause that

5 a -- someone in Ms. Miller's age group may be experiencing?

6 A. Do I know from general knowledge symptoms of menopause?

7 Q. Either from your professional or personal knowledge.

8 A. Yes.

9 Q. Do you know that menopause can cause, for example, hair  
10 loss?

11 A. That wouldn't be the -- be one I would -- that I would  
12 bring to mind, personally.

13 Q. All right. And how about -- about acne?

14 A. I guess the things that come to mind -- do you want things  
15 that come to my mind?

16 Q. Yes, please.

17 A. The things that come to my mind would be hot flashes,  
18 memory loss. Those would be things that come to my mind first.

19 MR. EDELSON: Okay. I'll -- I'll pass on that, your  
20 Honor. That --

21 THE COURT: Sounds like a good idea.

22 MR. EDELSON: And I apologize for taking your time.  
23 We weren't expecting --

24 THE COURT: No, I appreciate your need, and that you  
25 took it up outside the presence of the jury.

Fox - D

1           Let's see if we can get the jurors back. They may  
2 not all be right, at this moment, ready to come in. So just  
3 stand by.

4           MR. JUSTIN BAXTER: Judge, I see the witness looking  
5 quizzically.

6           To be clear, we're not going to ask those questions  
7 when the jury comes in.

8           THE WITNESS: Do you want me to stand up for the  
9 jury?

10          THE COURT: You're fine where you are.

11          THE WITNESS: Okay. Thank you.

12          THE COURT: And let me be clear, you're not going to  
13 be asked any of the questions you were just asked, in the  
14 presence of the jury.

15          THE WITNESS: Thank you.

16          (Jurors enter.)

17          THE COURT: All right. Thank you, everyone. Please  
18 be seated.

19          Thank you, jurors.

20          Mr. Edelson.

21          MR. EDELSON: Thank you, your Honor. I have no  
22 further questions for this witness.

23          THE COURT: All right. Redirect?

24          MR. MICHAEL BAXTER: And I have no further redirect.

25          THE COURT: Thank you. You're free to go, Ms. Fox.



Evanson - D

248

1 Next witness, please.

2 Would you come forward here, please, to the witness  
3 chair. Please come all the way up to the chair.

4 Please remain standing. Face the jury and the  
5 deputy. Raise your right hand to be sworn.

6 (Witness sworn.)

7 THE WITNESS: Yes.

8 THE CLERK: Please take a seat.

9 THE COURT: Bring yourself close in to the microphone  
10 there. Scoot yourself in. And when you're situated, please  
11 tell us your full name and spell all of it.

12 THE WITNESS: Monica Evanson. M O N I C A.  
13 E V A N S O N.

14 THE COURT: Thank you.

15 Counsel.

16 DIRECT EXAMINATION

17 BY MR. MICHAEL BAXTER:

18 Q. Ms. Evanson, where do you live?

19 A. Aurora. Right across the street from Julie.

20 Q. And what do you do for a living?

21 A. I'm a hairdresser.

22 Q. And how long have you been a hairdresser?

23 A. 35 years.

24 Q. Now, how do you know Ms. Miller, the plaintiff in this  
25 case?

Evanson - D

1 A. She's my neighbor, my best friend. I'm her hairdresser.  
2 She does things with me. We vacation together, serve on  
3 committees.

4 Q. How long have you known her?

5 A. 22 years.

6 Q. And how often do you see her?

7 A. I would say at least weekly.

8 Q. And what are the circumstances when you would see her?

9 A. She comes over to the house. We -- gosh, we vacation  
10 together. I do her hair. We have served on committees  
11 together.

12 Q. Can you tell me just briefly your observations about her?

13 A. Julie is the best person you ever want to know. She is a  
14 friend to everyone. She is active in the community. Serves on  
15 all committees. Member of the school board. Even beyond when  
16 her kids are there. She has exchange students in her home,  
17 even when her kids were grown and gone. I could go on and on.

18 Q. Has she ever spoken about credit reporting problems around  
19 you?

20 A. Yeah, she has.

21 Q. Can you outline for the jury when this issue would come  
22 up?

23 A. It -- it came up on and off over the last several years,  
24 and escalated at certain points. But a -- I can give specifics  
25 of being at her house and having papers spread out on her table

Evanson - D

250

1 and wanting to know what that was all about, and she explained  
2 that it was the nightmare that just would not end. And --

3 Go ahead.

4 Q. I'm sorry.

5 I didn't mean to interrupt you. But you said it --  
6 it had escalated. When did it escalate?

7 A. I would -- for me, it happened -- because I'm her  
8 hairdresser, and I -- that's the worst of it, is when her hair  
9 was falling out a couple of summers ago.

10 And I asked, just through doing her hair, and, you  
11 know, again and again, it's all the stress she's under due to  
12 this?

13 Q. And what did she say?

14 A. Yes. She doesn't know how to get this to stop, how to get  
15 it to end. It's -- it just unfolds. Just about the time she  
16 thinks it's stopped, it rears its ugly head again.

17 Q. Did she ever tell you the specifics about what her problem  
18 was with the credit reporting agencies?

19 A. Yes, she did. Another person's name and information was  
20 on her credit report, and she was fearful where her information  
21 was. But also just how humiliating and damaging it is to  
22 have -- and frustrating to have bad credit information on hers,  
23 when that's not the way she does business.

24 MR. MICHAEL BAXTER: That's all the questions I have  
25 of this witness.

Evanson - X

251

1 THE COURT: All right. Cross.

2 MR. EDELSON: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. EDELSON:

5 Q. Good morning, Ms. Evanson. I'm Jeff Edelson, and I  
6 represent Equifax. I just have a few follow-up questions for  
7 you.

8 A. Okay.

9 Q. During that time period, did you have an understanding  
10 that there were three major credit reporting agencies in the  
11 country?

12 A. I -- I am aware that there are three, yes.

13 Q. Did you -- did you know that Ms. Miller had sued -- at  
14 this point, sued all three of them?

15 A. No.

16 Q. That she was having issues with Experian and TransUnion  
17 and with Equifax?

18 A. I am not familiar with -- at -- you know, what time --  
19 any --

20 Q. You didn't get into any details about which credit  
21 reporting agency she was responding to at which time, and so  
22 forth. Correct?

23 A. If she did, I wasn't -- I didn't remember the specifics or  
24 which one. I just --

25 Q. Are you aware that menopause causes hair thinning, as a

1 hairdresser?

2 A. Lots of things cause hair thinning, and probably the  
3 number one is stress.

4 Q. But my question is, are you aware that menopause causes  
5 hair thinning?

6 A. It can, if you're low on estrogen. But as far as I know,  
7 Julie takes -- takes hormones. So I know it doesn't -- it  
8 doesn't have to, if you compensate for it.

9 Q. But it can?

10 A. It can, if you don't take hormones, um-hmm.

11 Q. And you don't have any information about what her medical  
12 history was, do you?

13 A. As far as I know, I -- I mean, I don't know if I'm  
14 qualified to give out Julie's medical history.

15 I know that she takes estrogen.

16 THE COURT: Excuse me. I think the form of the  
17 question is really a problem, given the nature of its breadth.  
18 So --

19 MR. EDELSON: I'm just going to withdraw the  
20 question, your Honor. Thank you.

21 THE COURT: Thank you.

22 BY MR. EDELSON:

23 Q. Was there anything about the experience with Ms. Miller  
24 and her issues with the -- her credit reports that caused you  
25 to change your opinion about her?

Evanson - X

253

1 A. Not me, because I'm her best friend. But I felt badly for  
2 her when she would have situations. Where she went to the bank  
3 and was denied credit. And it's not -- if you know Julie,  
4 she's all about helping others, and she's -- she's self-less.  
5 And her reputation is everything to her.

6 Q. That's really my question. You know, we're trying to  
7 understand, here, in this court any damage that may have  
8 happened to her reputation.

9 And the question is, for me, are you aware of anyone  
10 who thought less of Ms. Miller as a result of anything going on  
11 with her credit?

12 A. I don't know all of Julie's friends, or I don't know all  
13 of the circumstances. I just know Julie, and I know how  
14 devastated she's been over certain incidents that have gone on.

15 Q. And we understand that she was upset, but my question goes  
16 to the reputation.

17 Are you aware -- and if you're not aware, then I  
18 think the answer is no. But are you aware of anybody who  
19 thought less of Ms. Miller, who no longer liked Ms. Miller,  
20 or -- or changed their view of Ms. Miller as a result of any of  
21 this?

22 A. I would have to say I don't know of anyone personally, but  
23 then I wasn't behind her in Mervyns when they pulled her card.  
24 You know. I mean, it's -- so I don't know of people  
25 specifically, but I know that it had to be -- I don't know. I

Evanson - X

254

1 just feel like it had to have been damaging to her.

2 Q. What -- you mentioned Mervyns?

3 A. Or not Mervyns. I think it was Meier & Frank. I can't  
4 remember the exact department store it was. I feel like it  
5 was --

6 Q. And you learned this from who?

7 A. Julie.

8 MR. EDELSON: Okay. I have nothing else. Thank you.

9 THE COURT: Redirect?

10 MR. MICHAEL BAXTER: No questions, your Honor.

11 THE COURT: All right. Thank you, Ms. Evanson.

12 You're free to go.

13 Next witness, please.

14 MR. JUSTIN BAXTER: Your Honor, plaintiff calls  
15 Margaret Leslie.

16 THE COURT: All right. Ms. Leslie, would you come to  
17 the witness chair, please.

18 Please face the jury and deputy. Thank you.

19 (Witness sworn.)

20 THE WITNESS: I do.

21 THE CLERK: Please take a seat.

22 THE WITNESS: Thank you.

23 THE COURT: Bring yourself close around to the  
24 microphone, there.

25 Tell us your full name, and please spell all of it.

Leslie - D

255

1 THE WITNESS: My full name is Mary Margaret Fortson  
2 Leslie. M A R Y. M A R G A R E T. Fortson, F O R T S O N.  
3 And Leslie is L E S L I E.

4 THE COURT: Thank you.

5 Counsel.

6 MR. JUSTIN BAXTER: Thank you, Judge.

7 DIRECT EXAMINATION

8 BY MR. JUSTIN BAXTER:

9 Q. Good morning, Ms. Leslie.

10 A. Good morning.

11 Q. We've been introduced before. I'm Justin Baxter. I'm one  
12 of the attorneys for Ms. Miller.

13 A. Yes.

14 Q. Today you're appearing as the corporate representative for  
15 Equifax?

16 A. Yes, I am.

17 Q. All right.

18 THE COURT: Mr. Baxter, we're having a little -- at  
19 least I'm having a little trouble hearing you.

20 Thank you. Go ahead.

21 MR. JUSTIN BAXTER: Thank you, Judge.

22 BY MR. JUSTIN BAXTER:

23 Q. In front of you, do you see a black notebook that says  
24 "exhibits"?

25 Would you turn to the tab that says one, one, two;



Leslie - D

256

1 112.

2 A. (Pause, referring.) It's a different color. Is that --  
3 okay. I think I've got it.

4 Q. Okay. You've seen this document before. Correct?

5 A. Yes.

6 Q. This is a credit report that Equifax prepared for  
7 Ms. Miller in January of 2012?

8 A. January 5th, 2012, is on the letter and on the disclosure  
9 form, we call it; the credit report.

10 Q. And you've had a chance to review the document before.  
11 Correct?

12 A. I have reviewed the credit reports for Ms. Miller, yes.  
13 And I don't recall specifically this one, but it's familiar to  
14 me.

15 Q. Does this credit report reflect the maximum possible  
16 accuracy?

17 A. I believe, based on the rules that we have in our systems  
18 and our policies and procedures, that we had done the best with  
19 the information we were given on Ms. Miller.

20 I am aware that later she identified to Equifax that  
21 some of this information does not belong to her. But I do  
22 believe, that given our policies and procedures, that we did  
23 the best we could with the information we were provided.

24 Q. Does this credit report reflect the maximum possible  
25 accuracy?

Leslie - D

257

1 A. Based on the information we were given, I think it's the  
2 best we could have done. So, yes, as far as the best we could  
3 have done.

4 Now, if you define "maximum possible accuracy"  
5 outside the realm of the data we were given, then I think it's  
6 a difficult question to answer. Because if you apply  
7 information that the systems -- the policies and procedures  
8 are -- have in front of them to that definition, then the  
9 system's not aware of it. Given the system information it had,  
10 I think it was the maximum we could do with it, yes. Given  
11 what the system knew.

12 Q. So my question was, does this document reflect the maximum  
13 possible accuracy? Is your answer yes?

14 MS. SUMNER: Objection, your Honor. I think --

15 THE COURT: Overruled. He's trying to clarify the  
16 witness's answer.

17 The -- the question called for a yes or no, and she  
18 hasn't provided one yet. So the -- the objection is overruled.

19 Go ahead with your question.

20 THE WITNESS: I need some clarification then, please.

21 If -- if I'm answering it based on the data that was  
22 given to Equifax, then I believe it is the maximum we could do  
23 given our policies, procedures, and rules.

24 If you're saying that there's extra information  
25 outside of that, things I'm aware of now, clearly not. It's

Leslie - D

258

1 not when we would -- it was not an accurate representation of  
2 Ms. Miller's credit report.

3 But given the information at the time it was  
4 produced, and given our policies and procedures and the -- the  
5 data that was available to us, it was the maximum we could do  
6 at that time.

7 So I'm not sure at what time you're asking. I'm not  
8 sure relative to the data and information that's in the systems  
9 and with -- against our policies and procedures, I don't know  
10 where you're asking the maximum accuracy at a point of time.  
11 But that's -- that's the best I can do.

12 BY MR. JUSTIN BAXTER:

13 Q. All right. So your testimony is that Exhibit 112 reflects  
14 the maximum possible accuracy?

15 A. At that point in time, given our policies procedures and  
16 the information available to Equifax and our ability to use  
17 that information in the context of this -- this information, I  
18 believe that we had done the best we could.

19 Q. Okay. Thank you.

20 Would you turn to page 3 of Exhibit 112.

21 This is -- if you look in the center of the far right  
22 hand, you can see the document is situated landscape --

23 A. I'm sorry. I'm not -- I'm confused. Am I still in  
24 section 112?

25 Q. Yes. This is 112. This is page 3 of 10.

Leslie - D

259

1 A. Okay.

2 Q. Okay. This is the actual credit file that was prepared on  
3 January 5th, 2012. Correct?

4 A. Yes.

5 Q. Okay. This credit report has Ms. Miller's correct Social  
6 Security number. Correct?

7 A. I believe her correct Social Security number is the one  
8 that ends in 9788. So, yes, that would be her Social Security  
9 number.

10 Q. It also contains Ms. Miller's correct date of birth.  
11 Correct?

12 A. I believe that that one is her date of birth, yes.

13 Q. And her correct address?

14 A. The Maple Leaf address, I am aware, is her address.

15 Q. And this credit report contains no collections. Correct?

16 A. (Pause, referring.) I do not see collections on this  
17 credit report.

18 Q. Okay. So this credit report is accurate?

19 A. I believe it's accurate, based on the data that was  
20 provided to Equifax at the time it was produced.

21 Again, you have to look at accuracy in a context of  
22 what we have available to us to use.

23 If you -- if we're given information that matches to  
24 Ms. Miller's information and the policies and procedures and  
25 the systems match that information, we -- the -- the system

Leslie - D

260

1 doesn't have beliefs. But the system will say this does match,  
2 it belongs together, and will put the information together.  
3 And we consider that to be accurate.

4 Now, if you come around later and we are informed and  
5 there is evidence that the information actually didn't belong  
6 there, we have policies and procedures to remove the  
7 information.

8 But, again, I have to look at accuracy in terms of  
9 what's available at the time; our policies and procedures at  
10 that time.

11 So, yes, I believe that this was accurate. I stand  
12 by the information in the credit report, given that snapshot  
13 and moment in time, and what was available to us.

14 Q. All right. In September of 2009 -- excuse me. In  
15 September of 2009, Equifax received an electronic form called  
16 an automated universal data form or an AUD from a collection  
17 agency called Bay Area Credit. Correct?

18 A. That is correct.

19 Q. Can you turn to the tab marked Exhibit 109.

20 A. Yes.

21 Q. And this document is a printout of computer records  
22 maintained by Equifax. Correct?

23 A. That is correct. These are printouts, I believe, in this  
24 document, for AUDs or universal -- automated universal data  
25 forms.

Leslie - D

261

1 Q. Would you turn to page 7 of the AUD, Exhibit 109.

2 A. Is that one EIS No. 330? Or do you want me on 329?

3 Q. For your benefit and for the jury's, there are letters and  
4 numbers at the bottom of the page, in the lower right-hand  
5 corner.

6 A. Okay.

7 Q. I'm directing you to EIS-JMiller-000329.

8 A. Okay. Yes.

9 Q. All right. Did Equifax receive an AUD from Bay Area  
10 Credit on September 18th, 2009?

11 A. Yes. This is -- this is an AUD that was received  
12 September 18th, 2009, at 17 -- let's see. 5:27.

13 Q. After receiving this AUD, did Equifax combine Ms. Miller's  
14 credit file with that of another person with a different Social  
15 Security number, date of birth, and address?

16 A. The system, given this information reported to us -- what  
17 happens in the system is that it will pull the information of  
18 Julie M. Miller's that matched to this particular AUD. And at  
19 the time -- at this time, this AUD matched to two Julie  
20 Millers.

21 One is your client, and another is a Julie Miller --  
22 or a file on a Julie Miller that was at a different address,  
23 and they have nearly the same Social Security number.

24 And at the time, it's my belief that this particular  
25 AUD did -- did produce the combination of the two files into

Leslie - D

262

1 one file. Yes. This is information that was provided to us,  
2 that caused the combination of the two files.

3 Q. All right. Let me restate my question.

4 After receiving the AUD, did Equifax combine  
5 Ms. Miller's credit file with that of another person who had a  
6 different Social Security number, date of birth, and address?

7 A. Equifax combined two files with the name Julie Miller and  
8 with a similar Social Security number. And they did put the  
9 two files together.

10 There's more involved in that, but I won't go into  
11 that right now.

12 I'm aware that one credit report does belong to your  
13 client. I don't know if that's another person. I'm assuming  
14 it is another person, with the Julie M. Miller, with a very  
15 close Social Security number.

16 So the -- so, yes, the combination of the two files  
17 occurred.

18 Q. Okay. And you said their Social Security numbers were  
19 similar, but you agree they were different?

20 A. Yes. They are different. They're what we call a  
21 seven-for-nine Social Security number.

22 And a seven-for-nine is that -- seven of the nine  
23 digits match exactly, or are in -- and are in the same place in  
24 the -- in the Social Security number. What is different is in  
25 two places in the Social Security number, there are different

Leslie - D

263

1 numbers. They differ.

2 So we call it a seven-for-nine Social Security number  
3 match.

4 Q. Okay. And my question was, the Social Security numbers  
5 were different. And your answer is yes?

6 A. They differ by two digits.

7 Q. And the date of birth. Ms. Miller's date of birth is  
8 different from the other person's. Correct?

9 A. The date of births are within two years of each other.  
10 That's -- but they are not the same date of birth, that's true.  
11 But they are very close, and they are very close in age.

12 And there are reasons why we allow some flexibility  
13 in differing date of births, if they are within two years of  
14 each other.

15 So -- but, yes, they are different date of births,  
16 but within -- I think one of them is a September 22nd, 1957,  
17 and hers is the April 16th, 1956. And that looks like a --  
18 what? 13, 14-month difference, something like that.

19 THE COURT: Excuse me.

20 Ms. Leslie, you need to answer the question asked.  
21 And if there's a need to expound on the answer, you'll be  
22 asked. So in the interests of time, could you please take care  
23 to listen to the question asked, and answer only that question.

24 Counsel.

25 MR. JUSTIN BAXTER: Thank you, Judge.



Leslie - D

264

1 BY MR. JUSTIN BAXTER:

2 Q. Finally, the address that Bay Area Credit provided to  
3 Equifax was different from Ms. Miller's actual address.

4 Correct?

5 A. That's correct.

6 Q. After September of 2009, Equifax maintained a single mixed  
7 file that included accounts and information for both Ms. Miller  
8 and the other person. Correct?

9 A. At the time, we maintained a file with information that  
10 was later identified to be mixed.

11 Q. Okay. And I just want to get an answer to my question,  
12 which is after September of 2009, Equifax maintained a single  
13 file that contained accounts and information that belonged to  
14 Ms. Miller and to the other person. Is that correct?

15 A. That is correct. Yes.

16 Q. Thank you.

17 If a creditor requested Ms. Miller's credit file,  
18 using her Social Security number, it would receive a consumer  
19 report with both Ms. Miller's information and the other  
20 person's information. Correct?

21 A. No. We don't just return a credit report based on a  
22 Social Security number. There has to be a lot of information  
23 provided to produce a -- a credit report.

24 There have -- we have to have other matching  
25 information. So with just a credit -- just her Social, no, we

Leslie - D

265

1 wouldn't return that.

2 Q. Okay. If a creditor requested Ms. Miller's credit file  
3 and provided the necessary information, the single mixed credit  
4 file would include account information for Ms. Miller and for  
5 the other person. Is that correct?

6 A. I think I know what you're asking. If an inquiry matches  
7 to this particular file, then, yes, the information that's  
8 contained in the file would be returned, and some of it was  
9 later identified as not belonging to her.

10 So I believe -- yes.

11 Q. Thank you.

12 A. I think I understand your question.

13 Q. And if a creditor requested the other person's credit file  
14 using their information, that creditor would receive a consumer  
15 report with that other person's information, as well as  
16 Ms. Miller's information. Correct?

17 A. I'm more comfortable saying that if an inquiry matches to  
18 this file and the -- if it matches, then it will be returned  
19 with the information for Ms. Miller, your client, and for the  
20 other Ms. Miller; if -- if that's what you're asking.

21 Q. That answers my question.

22 A. Okay.

23 MR. JUSTIN BAXTER: Judge, those are the questions I  
24 have for this witness.

25 THE COURT: Thank you. Cross.

Leslie - D

266

1 MS. SUMNER: Your Honor, we would like to reserve our  
2 examination of Ms. Leslie when we present our evidence.

3 THE COURT: Very fine.

4 You may step down, Ms. Leslie. Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: Next witness.

7 MR. JUSTIN BAXTER: Your Honor, we're going to turn  
8 to a deposition designation.

9 THE COURT: All right. And that takes a short amount  
10 of time? Roughly 15 minutes? No more than that?

11 MR. JUSTIN BAXTER: It does.

12 I might suggest this might --

13 THE COURT: I was just going to say we do that first,  
14 then we take a break, and then you have one more witness.  
15 Isn't that right?

16 MR. JUSTIN BAXTER: That's correct. We have -- the  
17 parties just have a brief matter for the Court, and perhaps we  
18 could --

19 THE COURT: Around the deposition?

20 MR. JUSTIN BAXTER: Around the deposition, yes.

21 THE COURT: All right. So, jurors, I tried, but  
22 we're going to take the break anyway.

23 15 minutes, please. This will be your morning  
24 recess.

25 Remember not to talk about the case or anything it

Leslie - D

267

1 involves. Don't let anything concerning it cross your path.

2 We'll take 15 minutes and have you back, and we'll  
3 continue. You should know, actually, I think, they are ahead  
4 of schedule. So don't be concerned about the time.

5 All right. Please follow Ms. Boyer. Leave your  
6 notes here. Thank you.

7 (Jurors exit.)

8 THE COURT: All right. Thank you.

9 What's the issue?

10 MR. JUSTIN BAXTER: I don't think there's any  
11 intention here, but the depositions refer to the Bates numbers  
12 in the documents. And I've spoken to counsel, and we would  
13 like to supplant the actual exhibit numbers when we -- when we  
14 read that, to avoid --

15 THE COURT: That's perfect. That way the jury can  
16 track to what they actually have.

17 MR. JUSTIN BAXTER: Yeah. And then there's one other  
18 item, which I haven't discussed with counsel, but I think would  
19 be fine.

20 There's repeated reference to an acronym, ACDV, which  
21 the jury hasn't heard yet. I guess I would like to tell the  
22 jury, as a preface, that it's the automated consumer dispute  
23 verification form.

24 THE COURT: So is there any objection to simply  
25 instructing the jury ahead of the reading that the parties

Leslie - D

268

1 agree that the reference to ACDV is as counsel indicates?

2 MR. PERLING: Is that what you're going to say,  
3 Counsel?

4 MR. JUSTIN BAXTER: Yes.

5 THE COURT: It just means -- those letters mean  
6 this --

7 MR. PERLING: No objection, your Honor.

8 THE COURT: Okay. You can state that ahead of time.  
9 All right?

10 So let's take 15 minutes.

11 Do you have anything else, Mr. Perling?

12 MR. PERLING: No, your Honor.

13 THE COURT: All right. 15 minutes.

14 (Recess taken.)

15 THE COURT: Who's going to be the reader of the  
16 testimony? The answers, that is?

17 MR. JUSTIN BAXTER: Your Honor, I'll be asking the  
18 questions, and my father will be reading the answers.

19 THE COURT: If you would come to the witness stand,  
20 so it will help the jurors orient.

21 We're ready for the jury.

22 (Jurors enter.)

23 THE COURT: Thank you, everyone. Please be seated.

24 Now, jurors, you may wonder why Mr. Baxter is in the  
25 witness chair. He's not a witness, as I told you before. But

Leslie - D

269

1 he's going to be reading answers to questions posed to a  
2 witness before this trial started. Deposition testimony.

3 You'll recall that I told you earlier that sometimes  
4 witnesses aren't here in person but their prior testimony is  
5 recorded. And so Mr. Baxter -- this Mr. Baxter, Michael  
6 Baxter, will be reading the answers. Justin Baxter will be  
7 reading the questions. Justin Baxter is going to explain to  
8 you the name of the witness, who the person is, when the  
9 testimony was taken.

10 And he's going to explain one abbreviation used in  
11 the testimony, so that you know what it stands for.

12 So you should consider the answers that Mr. Michael  
13 Baxter reads as the testimony of that witness. And you'll  
14 evaluate it the same, as you're evaluating the testimony all --  
15 all the live witnesses who testify.

16 Okay. Mr. Baxter.

17 MR. JUSTIN BAXTER: Thank you, Judge.

18 Ladies and gentlemen of the jury, the witness in the  
19 deposition was LaDeamya Mixon.

20 She was designated as Equifax's corporate  
21 representative for certain topics, and she gave her deposition  
22 on July 24th, 2012.

23 Oh, I'm sorry. And then the -- the acronym is ACDV.  
24 It's an acronym for automated consumer dispute verification.

25 It's an Equifax record that they'll explain in their

Mixon - Deposition Testimony

270

1 case.

2 THE COURT: Thank you, Counsel.

3 Go ahead.

4 (Deposition testimony of Ms. Mixon read as follows:)

5 DIRECT EXAMINATION

6 BY MR. JUSTIN BAXTER:

7 Q. Page 8.

8 Do you understand that you've been designated today  
9 by Equifax as its corporate representative on certain subject  
10 matters?

11 A. I do.

12 Q. Yeah. Can you tell me your understanding of those subject  
13 matters you've been designated to testify on today?

14 A. Equifax's policies and procedures that relate to the  
15 reverification or reinvestigation of disputed information.

16 Q. Are you also -- also authorized and designated to testify  
17 today regarding consumer disclosures to Ms. Miller?

18 A. Yes.

19 Q. Page 22.

20 Did Equifax ever notify Columbia Collection Service  
21 that Ms. Miller was disputing information that it was reporting  
22 to her credit file?

23 A. Since there's not an ACDV, I would say, no.

24 Q. Did Equifax ever notify a professional credit service that  
25 Ms. Miller was disputing information that it was reporting to

Mixon - Deposition Testimony

271

1 Ms. Miller's credit file?

2 A. Since there's no ACDV, I would say no.

3 Q. Did Equifax ever notify Portfolio Recovery Associates,  
4 that Ms. Miller was disputing information that it was reporting  
5 to Ms. Miller's credit file?

6 A. Since there is not an ACDV, I would say no.

7 Q. Page 43.

8 All right. In response to Ms. Miller's January 2010  
9 dispute, Equifax sent zero ACDVs to furnishers. Correct?

10 A. That's correct.

11 Q. And Equifax notified zero furnishers of Ms. Miller's  
12 dispute. Correct?

13 A. Correct.

14 Q. Equifax sent Ms. Miller the February 5th, 2010, letter  
15 requesting additional information. Correct?

16 A. That's correct.

17 Q. And why did Equifax send Ms. Miller that letter?

18 A. Because there was a discrepancy in identification  
19 information.

20 Q. Page 56.

21 Yes. Would you agree that Equifax acted consistent  
22 with its policies and procedures when it handled Ms. Miller's  
23 February and January 2010 dispute?

24 A. Yes.

25 Q. Page 67.



## Mixon - Deposition Testimony

272

1 And the ACIS case that was created in February of  
2 2010, was that handled by Equifax or a third-party vendor?

3 A. It was handled by a third-party vendor, acting on behalf  
4 of Equifax.

5 Q. And -- and which vendor was it?

6 A. The vendor was called DDC.

7 Q. And are the dispute agents employed by DDC trained in  
8 Equifax's policies and procedures?

9 A. Yes.

10 Q. Are they trained to comply with the federal Fair Credit  
11 Reporting Act?

12 A. Yes.

13 Q. Does Equifax perform any performance reviews of the  
14 dispute agent?

15 A. There are quality reviews, if that's what you mean by  
16 performance reviews. There are quality reviews that are  
17 performed by Equifax of the dispute agents.

18 Q. Okay. That's what I mean.

19 And what do you mean by "quality reviews"?

20 A. Equifax will review a sample of work that is processed by  
21 the vendor agents to ensure that the agents are following the  
22 policies and procedures that are trained to the agent.

23 Q. Does Equifax record or keep track of the number of  
24 disputes a vendor agent handles?

25 A. I believe, yes, there is some tracking. I'm not sure how

## Mixon - Deposition Testimony

273

1 long it's kept, but there is tracking of disputes processed by  
2 vendor agents, yes.

3 Q. And is the number of disputes handled by a vendor agent a  
4 consideration in the quality review?

5 A. No.

6 Q. Okay. If a vendor agent only handled one dispute in one  
7 day, would that be of concern to Equifax?

8 A. That would be a production concern, I would say, for the  
9 vendor, being that -- that that employee, that agent is  
10 employed by that vendor.

11 Q. Page 79.

12 Okay. When Ms. Miller applies for credit and her  
13 creditor requests a copy of her credit report, does Equifax  
14 transmit a credit file to that creditor?

15 A. I honestly can't answer what would be provided to the  
16 creditor based upon what they entered to access the consumer's  
17 credit file. Being that the information did not match, I can't  
18 say for certain if a creditor would have received a file for  
19 Ms. Miller.

20 Q. Well, let's look at some documents.

21 Why don't you look at Exhibit 1.

22 A. Okay.

23 Q. Do you see that this is an adverse action letter from  
24 KeyBank?

25 A. Yes.

Mixon - Deposition Testimony

274

1 Q. And it says that KeyBank is denying Ms. Miller credit  
2 based upon delinquencies listed in her Equifax credit report.

3 A. I see that.

4 Q. And the date of the letter is December 2009.

5 A. Yes.

6 Q. Look at Exhibit 5, page 9.

7 A. Okay.

8 Q. Do you see in the inquiry section, KeyBank requested a  
9 copy of this credit file in December of 2009?

10 A. I see, yes.

11 Q. Page 81.

12 Would you agree that Equifax sent a copy of this  
13 credit file to KeyBank in December of 2009?

14 A. Yes.

15 Q. Okay. And this credit file actually belongs to the other  
16 consumer. Correct?

17 A. It has a different consumer's identification information  
18 on it.

19 Q. This is not Ms. Miller's credit file. Correct?

20 A. No.

21 Q. And Equifax sent this credit file to KeyBank in response  
22 to a request for Ms. Miller's credit file. Correct?

23 A. Yes.

24 Q. Did Ms. Miller contact Equifax by telephone on June 28th,  
25 2011?

Mixon - Deposition Testimony

275

1 A. Yes.

2 Q. Let's read through the -- going to page 83, line 5.

3 Let's read through the comment screen in Exhibit 17.

4 A. Okay.

5 Q. Line 19.

6 When a consumer contacts Equifax by telephone, is  
7 there a record created separate from this consumer contact  
8 history?

9 A. If there is an actual dispute of items on the credit file,  
10 there would be an ACIS case, in the system, just as if they had  
11 written in their dispute.

12 Q. Is there an ACIS case in the records relating to the June  
13 28th, 2011 contact?

14 A. I don't see an ACIS case.

15 Q. And if there was a dispute taken, that would be reflected  
16 in an ACIS case. Correct?

17 A. Correct.

18 Q. Okay. And then what department would have received this  
19 telephone call?

20 A. The phone call could have been received by the dispute  
21 department. The Equifax dispute department would receive phone  
22 calls from consumers.

23 Q. Okay. And is that the same department that receives phone  
24 requests for consumer disclosures?

25 A. Yes.

## Mixon - Deposition Testimony

276

1 Q. And is that department located in Georgia?

2 A. There is a department located in Georgia, yes.

3 Q. Are you able to tell me where this phone call was  
4 received?

5 A. Yes.

6 Q. And where was it received?

7 A. In Georgia.

8 Q. And so this was received by the telephone dispute  
9 department in Equifax, in Georgia?

10 A. Correct.

11 Q. Okay. And so tell me what the procedure is for receiving  
12 this kind of phone dispute.

13 A. Again, it depends upon the nature of the phone call from  
14 the consumer. A consumer can contact Equifax and reach the  
15 dispute department, or a live telephone agent, with general  
16 questions about their credit file. Or they can lodge a dispute  
17 of information on the credit file.

18 So the way that the telephone call is handled, again,  
19 would depend upon the conversation with the consumer.

20 Q. Okay. So let's go back to the text in the comment box.

21 It says the agent advised that the consumer needs to  
22 contact credit grantors to up -- update SSN.

23 Do you see that?

24 A. I do.

25 Q. Is that consistent with Equifax's policies and procedures?

## Mixon - Deposition Testimony

277

1 A. That may be something that an agent would advise a  
2 consumer.

3 Q. Okay. Under what circumstances?

4 A. If a consumer is disputing the Social Security number is  
5 reporting incorrectly on their credit file and if the agent  
6 does not have documents in hand to prove the Social Security  
7 number, an agent may advise a consumer of how a Social Security  
8 number is actually reported to the credit file; being by one of  
9 the -- their current or one of the creditors that's reporting  
10 on the credit file. Therefore, an agent may advise a consumer  
11 that there's a process they could take to ensure their  
12 creditors have their Social Security numbers accurately.

13 They may advise the consumer to contact the creditors  
14 to ensure that their Social Security number is recording  
15 accurately in their system. So, in return, they can report the  
16 information correctly when they report their account  
17 information to Equifax.

18 Q. Okay. If a consumer disputes specific accounts that  
19 appear on their credit report, would Equifax advise them to  
20 contact the credit grantors?

21 A. If a consumer disputed specific accounts on the credit  
22 file, Equifax -- the policy is that Equifax would start a  
23 reinvestigation to verify those disputed items with the credit  
24 grantors.

25 Q. Page 91.

Mixon - Deposition Testimony

278

1                   Okay. Let's turn back to Exhibit 19, page 9.

2       A.     Okay.

3       Q.     And would you agree that Ms. Miller sent these documents  
4     to Equifax?

5       A.     Yes.

6       Q.     Okay. Take a look at -- I believe that's Exhibit 19, as  
7     well.

8       A.     Okay.

9       Q.     Okay. Do you see that it's a dispute letter dated July  
10    18th, 2011?

11    A.     Yes.

12    Q.     Page 95.

13               Okay. Then if you'll turn to Exhibit 19, page 11.

14    A.     Okay.

15    Q.     Do you recognize this document?

16    A.     Yes.

17    Q.     And what is it?

18    A.     It's called a research request form.

19               That's included with the disclosure or copy of the  
20    credit file that a consumer receives.

21    Q.     Okay. And this is a form that Equifax provides to  
22    consumers for the purpose of disputing specific accounts and  
23    trade lines. Correct?

24    A.     Correct.

25    Q.     And in this research request form, Ms. Miller disputes a

Mixon - Deposition Testimony

279

1 series of accounts. Correct?

2 A. Yes.

3 Q. These include, she writes, all Columbia Collection  
4 accounts.

5 A. It's not very clear. I can't really see this.

6 I think I see that. Yes.

7 Q. Okay. She disputes the Professional Credit Services  
8 accounts?

9 A. Yes.

10 Q. She disputes Aaron Rents?

11 A. I see that, yes.

12 Q. And American Express?

13 A. Yes.

14 Q. And Portfolio Recovery?

15 A. Yes.

16 Q. And Visa?

17 A. Yes.

18 Q. And for the last four trade lines on that page, she  
19 lists -- she lists the specific account numbers. Correct?

20 A. Yes.

21 Q. Okay. Does Equifax understand that Ms. Miller is  
22 disputing all of the Columbia Collection accounts?

23 A. It's stated here, yes.

24 Q. And she's disputing all of the professional credit  
25 services accounts?



Mixon - Deposition Testimony

280

1 A. Yes.

2 Q. And for the other four accounts that she's listed by  
3 number, does Equifax understand that she's disputing those  
4 accounts?

5 A. Yes.

6 Q. Did Equifax notify any of these furnishers of Ms. Miller's  
7 disputes?

8 A. I don't see a dispute, no.

9 Q. When Equifax receives a dispute from a consumer, it's  
10 required to notify the furnisher of a dispute. Correct?

11 A. That is the requirement and policy, yes.

12 Q. And Equifax did not notify these furnishers of  
13 Ms. Miller's dispute. Correct?

14 A. Correct.

15 Q. Is that consistent with Equifax's policies and procedures?

16 A. No.

17 Q. Let's turn to the next page. It's Exhibit 19, page 12.

18 And this is another copy of the research request form.

19 Correct?

20 A. Correct.

21 Q. And here Ms. Miller lists a Bay Area Credit account.

22 A. Yes.

23 Q. And she also has highlighted the Social Security number  
24 and date of birth?

25 A. Yes.

## Mixon - Deposition Testimony

281

1 Q. Did Equifax understand that Ms. Miller was disputing the  
2 Bay Area Credit account?

3 A. Yes.

4 Q. Did Equifax notify Bay Area Credit that Ms. Miller had  
5 disputed that information?

6 A. No.

7 Q. Is that consistent with Equifax's policies and procedures?

8 A. No.

9 Q. Why did Equifax not communicate Ms. Miller's disputes to  
10 those furnishers?

11 A. I don't see a reason why, other than unless it was because  
12 of the discrepancy in the ID information.

13 Q. Well, explain that to me.

14 Under what circumstance would Equifax not notify the  
15 furnisher of Ms. Miller's dispute?

16 A. If there is a discrepancy in the ID information on the  
17 credit file with the ID information that the consumer has  
18 provided and Equifax needs verification that the credit file we  
19 have in fact belongs to the consumer.

20 Q. Okay. So we saw earlier that the Social Security number  
21 and the birth date on this credit file are different from  
22 Ms. Miller's information. Correct?

23 A. Correct.

24 Q. So under that circumstance, would Equifax notify the  
25 furnishers of the dispute?

Mixon - Deposition Testimony

282

1 A. No.

2 Q. Okay. And why not?

3 A. Equifax would need proof that the ID information and  
4 credit file belongs to the consumer before sending a  
5 verification to the credit grantor.

6 Q. Page 100.

7 In response to Ms. Miller's July 2011 dispute, did  
8 Equifax mail Ms. Miller a request for additional information?

9 A. Yes.

10 Q. Why did Equifax send that letter to Ms. Miller?

11 A. The assumption is because of the discrepancy in the Social  
12 Security number.

13 Q. Let's focus on Exhibit 22, page 3, because I think we can  
14 both read that one.

15 A. Okay.

16 Q. This one is a W-2 form for Ms. Miller. Correct?

17 A. That's correct.

18 Q. And this is sufficient to establish Ms. Miller's Social  
19 Security number?

20 A. That's correct.

21 Q. And it's sufficient to establish Ms. Miller's mailing  
22 address?

23 A. Yes, it is.

24 Q. Okay. Then in addition, Ms. Miller also sent a copy of  
25 her insurance bill at Exhibit 22, page 2. Correct?

Mixon - Deposition Testimony

283

1 A. Yes.

2 Q. Okay. Thank you.

3 And that was sufficient to establish Ms. Miller's  
4 mailing address. Correct?

5 A. I said, yes. Yes.

6 Q. And Ms. Miller received -- strike that.

7 Equifax received these documents from Ms. Miller in  
8 response to the July 28th, 2011, request for additional  
9 information. Correct?

10 A. Yes.

11 Q. Did Equifax take any action in response to receiving those  
12 documents?

13 A. Let's see.

14 The next correspondence I see is a copy of the credit  
15 file that was sent to Ms. Miller. So it looks like a credit  
16 file was sent to Ms. Miller after that correspondence was  
17 received.

18 Q. So the credit file that you are speaking of is dated  
19 August 8th, 2011?

20 A. Yes.

21 Q. And that credit file continues to include a Social  
22 Security number that does not belong to Ms. Miller. Correct?

23 A. Correct.

24 Q. And a birth date that does not belong to Ms. Miller.  
25 Correct?

Mixon - Deposition Testimony

284

1 A. Correct.

2 Q. And the disputed addresses that do not belong to  
3 Ms. Miller?

4 A. Correct.

5 Q. And the disputed Columbia Collection Services accounts,  
6 that did not belong to Ms. Miller?

7 A. Correct.

8 Q. Did Equifax take any action to delete the disputed  
9 accounts or information?

10 A. No.

11 Q. Did Equifax take any action to investigate the disputed  
12 accounts or investigation -- or information?

13 A. No.

14 Q. Was that consistent with Equifax's policies and  
15 procedures?

16 A. No.

17 Q. And why didn't Equifax reinvestigate the disputed  
18 accounts?

19 A. Being that it's outside a policy, I have no idea why not.

20 Q. Why didn't Equifax notify the furnishers of Ms. Miller's  
21 dispute?

22 A. Same response. It's outside of policy, so I have no idea  
23 why not.

24 Q. Do you agree that the furnishers should have been notified  
25 of Ms. Miller's disputes. Correct?

Mixon - Deposition Testimony

285

1 A. That's correct.

2 Q. Let's turn to Exhibit 25.

3 A. Okay.

4 Q. This is another request for additional information, dated  
5 September 1st, 2011. Correct?

6 A. Correct.

7 Q. And if you read the first sentence of the letter, it  
8 refers to a request concerning Ms. Miller's Equifax credit  
9 file. Correct?

10 A. Correct.

11 Q. And that sentence -- why don't you read the first sentence  
12 into the record.

13 A. We have received your request concerning your Equifax  
14 credit file and have addressed your concerns.

15 Q. Did Equifax address Ms. Miller's concerns?

16 A. No.

17 Q. So the letter is not correct?

18 A. It is not.

19 Q. Under what circumstances would the agent choose to send  
20 this letter?

21 A. The agent would send this letter if a reinvestigation had  
22 been started for the consumer.

23 However, Equifax needed proof of a consumer's current  
24 address in order to release the results of the investigation.

25 Q. And in the prior contact, Ms. Miller had provided proof of

Mixon - Deposition Testimony

286

1 her current address. Correct?

2 A. That is correct.

3 Q. That was the W-2 and the insurance bill?

4 A. That is correct.

5 Q. So -- okay. So the dispute agent, in this instance,  
6 should not have sent the September 1st, 2011 letter. Correct?

7 A. That's correct.

8 Q. That was inconsistent with Equifax's policies and  
9 procedures?

10 A. It is inconsistent. That is correct.

11 Q. Let's turn to Exhibit 26.

12 A. Okay.

13 Q. This is a dispute package sent from Ms. Miller to Equifax,  
14 dated August 25th, 2011. Correct?

15 A. Correct.

16 Q. And did Equifax receive this correspondence on or about  
17 August 28th, 2011?

18 A. Yes.

19 Q. Page 112.

20 And then let's turn to Exhibit 26, page 2.

21 A. Okay.

22 Q. You see this is, again, Equifax's research request form?

23 A. It is.

24 Q. And Ms. Miller disputes a series of Columbia Collection  
25 Services accounts?

Mixon - Deposition Testimony

287

1 A. Correct.

2 Q. And she lists the individual account numbers?

3 A. Correct.

4 Q. And she lists them as "not mine"?

5 A. Correct.

6 Q. When a dispute agent receives a dispute of a series of  
7 accounts from the same furnisher, is the normal procedure to  
8 prepare an ACDV for each account?

9 A. Yes.

10 Q. Okay. So even if they're all the same furnisher, a  
11 dispute of 20 separate accounts would require a dispute agent  
12 to process 20 separate ACDVs?

13 A. That is correct. If all 20 of those accounts are on the  
14 credit file or credit report, yes.

15 Q. Okay. And in Ms. Miller's package, she again -- I'm  
16 sorry. In Ms. Miller's package, she also encloses her  
17 identification documents again. Correct?

18 A. Correct.

19 Q. Those are sufficient to establish Ms. Miller's identity to  
20 Equifax. Correct?

21 A. That's correct.

22 Q. And based upon these documents, would you agree that  
23 Equifax was required to notify the furnishers that Ms. Miller  
24 was disputing the information they reported?

25 A. Yes.



Mixon - Deposition Testimony

288

1 Q. And did Equifax -- and Equifax did not notify those  
2 furnishers. Correct?

3 A. Correct.

4 Q. And that was not consistent with Equifax's policies and  
5 procedures?

6 A. It was not.

7 Q. Each and every time that Ms. Miller disputed information  
8 in her credit file, did Equifax conduct a reinvestigation of  
9 her dispute?

10 A. No.

11 Q. Each and every time Ms. Miller notified Equifax of  
12 disputed information in her credit file, did Equifax notify the  
13 furnisher of Ms. Miller's dispute?

14 A. No.

15 Q. Each and every time Ms. Miller disputed information in her  
16 credit file, did Equifax respond to Ms. Miller with a statement  
17 of what it had done to review her dispute?

18 A. No. There was no dispute, so there was no response to a  
19 dispute.

20 MR. JUSTIN BAXTER: That completes the deposition of  
21 Ms. Nixon.

22 THE COURT: All right. Thank you.

23 Your next witness.

24 MR. JUSTIN BAXTER: The plaintiff calls Evan  
25 Hendricks.

Hendricks - D

289

1 THE COURT: All right.

2 Mr. Hendricks, would you come all the way to the  
3 witness chair, please. Thank you.

4 Please face the jury. Raise your right hand to be  
5 sworn.

6 (Witness sworn.)

7 THE WITNESS: I do.

8 THE CLERK: Please take a seat.

9 THE WITNESS: Thank you.

10 THE COURT: When you're situated there, bring  
11 yourself close in to the microphone; as close as you can.

12 Tell us your full name, and please spell all of it.

13 THE WITNESS: My full name is Evan Daniel Hendricks.  
14 It's E V A N, D A N I E L. Last name is H E N D R I C K S.

15 THE COURT: Thank you.

16 Counsel.

17 MR. JUSTIN BAXTER: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY MR. JUSTIN BAXTER:

20 Q. Good morning, Mr. Hendricks.

21 A. Good morning.

22 Q. We've met before, of course. I'm Justin Baxter. I'm one  
23 of the attorneys for Ms. Miller.

24 Can you tell the jury what you do for a living?

25 A. I'm in my 33rd year of publishing a specialty newsletter

1 called *Privacy Times*.

2           *Privacy Times* is sold to mostly institutional  
3 subscribers, government agencies, law firms, universities and  
4 corporations that have people that follow information privacy  
5 laws like the Freedom of Information Act, Privacy Act, and the  
6 Fair Credit Reporting Act.

7           I also do expert witness work and do consulting for  
8 government agencies and private companies on issues of privacy  
9 and personal information.

10 Q. Please tell the jury a little bit about your background.

11 A. I'm born and raised in Portland, Oregon. I went to West  
12 Sylvan Grade School, Lincoln High, and went to the University  
13 of Oregon for two years before transferring to Columbia, in New  
14 York City, where I graduated with a Bachelor of Arts in  
15 political science.

16 Q. Has Equifax recognized you as an expert in the field of  
17 information privacy?

18 A. Yes. In 1990, Equifax released a survey called Equifax's  
19 survey about privacy in the information age. And the  
20 acknowledgment section thanked me for my contributions to  
21 Columbia Professor Alan Westin in helping formulate some of the  
22 questions for the survey.

23 Q. Have any other credit reporting agencies recognized you as  
24 an expert in the field of credit reporting?

25 A. Yes. Another one of the credit reporting agencies is

1 Experian. And I have -- Experian advised me and I agreed to  
2 serve on their supervisory council from 2002 to 2004.

3 Q. Have you earned any certifications from the credit  
4 reporting agency?

5 A. Yes. I have an FCRA certification from a trade  
6 association called the National Credit Reporting Association.

7 Q. Has the Government recognized you as an expert in your  
8 field?

9 A. Yes. The -- I was served -- the U.S. Social Security  
10 Administration had many privacy issues to deal with, so they  
11 formed a panel of privacy experts; a three-member panel.

12 I was one of the members, and I served under contract  
13 with them from the late '90s to 2006.

14 I also did contract work for the postal -- U.S.  
15 Postal Service in translating their Privacy Act notices.

16 Q. Have you been admitted previously in court to testify  
17 about credit reporting?

18 A. Yes, on at least about 20 cases.

19 Q. Would you describe your testimony before Congress as it  
20 relates to the Fair Credit Reporting Act?

21 A. I've testified before Congress roughly ten times, always  
22 by invitation, about issues of accuracy and inaccuracy; issues  
23 about responsiveness by credit reporting agencies to consumer  
24 disputes; and -- and issues about how the credit scores work;  
25 and different policy issues of people getting access to their

1 credit reports, so they can read what's in them; and then find  
2 the errors and dispute them; and -- and also impermissible  
3 access to credit reports. Pretty broad range of issues within  
4 the credit reporting field.

5 Q. Please describe your published works relating to credit  
6 reporting.

7 A. Well, in addition to being the 33rd year of publishing  
8 *Privacy Times*, which is kind of a Kiplinger-style newsletter.  
9 It comes out every two weeks, 23 issues per year. So, you  
10 know, it gives you about 200 pages per year.

11 I've also authored a book called *Your Right To*  
12 *Privacy*, which is a handbook and a guide to people's legal  
13 rights, which was back in 1990.

14 And my most recent book is called *Credit Scores &*  
15 *Credit Reports, How The System Really Works, What You Can Do.*  
16 And that was first published in 2004.

17 And then it's -- it's in its third edition. Its  
18 third edition was published in 2007.

19 Q. Through your work, have you had access to information  
20 about the credit reporting industry that the average person  
21 would not have?

22 A. Yes. Because, as you might have noticed in a case like  
23 this, there's a lot of depositions and you get to see the  
24 internal documents of an entity like the defendant Equifax.  
25 And Equifax and the other consumer reporting agencies don't

1 publish what their practices and procedures are. So the only  
2 way you get access to them is by virtue of being an expert  
3 witness. And part of that is you have to agree to a protective  
4 order and only use the information for purposes of the case.

5 But that, over -- since I've been doing expert  
6 witness work for well over ten years, I've been able to review  
7 not only the manuals of credit reporting agencies and the  
8 creditors that furnish them, in other types of cases, but also  
9 get to hear their most knowledgeable people describe how  
10 those -- those policies or practices applied or did not apply,  
11 how they broke down, what went wrong.

12 Q. Would you explain to the jury what a credit report is.

13 A. A credit report is a compilation of sense -- very  
14 sensitive personal information. It has your credit history --  
15 there's basically three sections, unless you're unlucky enough  
16 to have the fourth section. The first section is your credit  
17 history; shows what credit cards, mortgages, auto loans you  
18 have. The -- another section has all of your identification  
19 information: Name, address, Social Security number, date of  
20 birth. A third section has the inquiries, which shows who has  
21 pulled your credit report and for what purpose. Is it for a  
22 promotion, so you could get preapproved credit card offer? Or  
23 is it because you applied for credit? Those are the hard  
24 inquiries that could have a minor effect on your credit score.

25 And the fourth section you don't want to have is

1 called the public records section. These are tax liens,  
2 judgments, and sometimes collections will go into that fourth  
3 section.

4 That's a section you don't want to have, because that  
5 is almost always damaging to your creditworthiness.

6 Q. You described what's in the credit report.

7 What are credit reports used for?

8 A. They're used for a broad range of purposes.

9 First, for evaluating whether to grant somebody  
10 credit.

11 They're also used for insurance, auto and homeowner's  
12 insurance. They're used as -- some employers will use a credit  
13 report for job screening.

14 Q. And how many Americans have a credit file today?

15 A. I think the best estimate is around 220 million.

16 Q. Can you explain to the jury what a credit score is?

17 A. A credit score is a three-digit number that reflects your  
18 creditworthiness at that particular moment in time.

19 The most widely used credit score by lenders is  
20 called a FICO score, and it's -- a FICO score is calculated and  
21 based entirely on information in the credit report.

22 So that's why my book is called Credit Scores. The  
23 first part of the book explores how the credit score works. It  
24 tells people, these are the factors that make it go up and  
25 down. And then goes on to describe the credit reporting

1 system, since that credit score is based entirely on that  
2 information in the credit report.

3 Q. Can you explain to the jury what risk-based pricing is?

4 A. Yeah, risk-based pricing is sort of our modern credit  
5 world.

6 Back in the old days, when I started, you know,  
7 working in this field in the late 1970s, it was pretty much  
8 either you got rejected for credit or you got accepted for  
9 credit. Thumbs up, thumbs down.

10 Now, because of the credit scoring system and because  
11 of automation, they can peg what interest rate they're going to  
12 charge you based on how high your credit score is. So the  
13 higher the score, the lower the rates you pay, and vice versa.

14 So the risk -- you know, your credit score reflects  
15 how risky you are, and the computer will calculate, okay, that  
16 means we have to charge this rate because you have this score.

17 Q. Would you explain to the jury what a mixed file is.

18 A. A mixed file is a term that came out of consent agreements  
19 in the early 1990s.

20 It was first defined -- and I think we'll talk a  
21 little bit about that. But it states when information on a  
22 consumer -- other than the consumer, who is the subject of the  
23 file -- the information of the other consumer gets mixed into  
24 that consumer's file. In other words, we're talking about  
25 consumer A. But information on consumer B is mixed into that



1 person's file.

2 Q. Have there been any studies or reports on the prevalence  
3 of mixed files?

4 A. Yes. Back in the early 1990s, one of the first ones was  
5 done by a group. And they did a Freedom of Information Act  
6 request regarding complaints to the Federal Trade Commission.

7 And they found that the leading cause of complaints  
8 was -- to the Federal Trade Commission was about problems with  
9 credit reporting agencies, inaccuracy, and nonresponsiveness.

10 And within that study, they found that almost half of  
11 the complaints regarded mixed files. That they -- people were  
12 getting mixed with fathers and sons, or people with similar  
13 identifiers.

14 And then you fast-forward to last year. A newspaper,  
15 *The Columbus, Ohio Dispatch*, did a similar exercise, getting  
16 complaints from both the state attorney generals and the  
17 Federal Trade Commission, and found significant rates of mixed  
18 files there, as did another study by the National Consumer Law  
19 Center.

20 Q. Has Equifax specifically been placed on notice of the  
21 prevalence of mixed files?

22 A. Yes. Because of all of the interest in -- like the early  
23 1990s, when this has become more and more publicly known  
24 through studies like the one I just cited and stories in the  
25 newspaper, both the state -- the attorney generals in 18 or 20

1 states started their own investigations of Equifax, as did the  
2 Federal Trade Commission.

3 And in 1992, the state attorney generals came to an  
4 agreement with Equifax, to end this investigation. Equifax was  
5 going to pledge to do a better job of -- of avoiding mixed  
6 files, and also to have specific procedures in place to  
7 reinvestigate disputes involving mixed files.

8 And another thing in --

9 MR. PERLING: Objection, your Honor. We're outside  
10 the scope.

11 THE COURT: The scope of what?

12 MR. PERLING: Prior order of the Court regarding the  
13 scope of this testimony.

14 THE COURT: Well, you'll need to be more specific,  
15 because I don't -- I'm not tracking with you.

16 What issue, specifically?

17 MR. PERLING: With regard to the specifics involving  
18 the 1992 and 1994 --

19 THE COURT: Fair enough.

20 Narrow the witness's focus -- jurors, disregard the  
21 last answer, so we can get a clean start on it.

22 And, Mr. Baxter, rephrase the question, please.

23 Thank you.

24 MR. JUSTIN BAXTER: Thank you, Judge.

25 BY MR. JUSTIN BAXTER:

1 Q. Mr. Hendricks, I'm going to focus you on notice to Equifax  
2 of the prevalence of mixed files.

3 A. Okay. Those -- those studies, those enforcement actions,  
4 the media coverage throughout that period and up to the last  
5 many, many years. And also during that time period, Congress  
6 started -- the Fair Credit Reporting Act was enacted in 1970.  
7 It's very old law. The first information privacy law.

8 And in the early 1990s, with all of that interest in  
9 the problems that were arising, Congress started holding  
10 hearings. And it took them -- after four years of hearings,  
11 they amended the law in 1996, to strengthen it. And a lot of  
12 the process in the hearings, leading up to that, focused on  
13 problems of mixed files and inadequate reinvestigations by  
14 consumer reporting agencies like Equifax.

15 Q. Have you -- have you reviewed materials from Ms. Miller's  
16 case?

17 A. Yes.

18 Q. And what have you looked at?

19 A. Well, I've looked at her credit reports, her Equifax  
20 reports, her dispute correspondence. I've looked at the  
21 deposition testimony of Ms. -- Ms. Miller and the -- the  
22 corporate representatives for Equifax like Ms. Margaret Leslie  
23 and Ms. Mixon. And I've also looked at their internal  
24 documents.

25 They become very important in a case like this,

1 because Equifax has internal documents called frozen scans,  
2 which are snapshots of what's in their database every month,  
3 going back in the past. And they also have a report called  
4 online combined report.

5 Those two types of reports are extremely important,  
6 in getting to what went wrong in this case.

7 Q. Does Ms. Miller's case involve a mixed file?

8 A. Yes.

9 Q. Can you explain how that happened?

10 A. It happened because -- and I believe it was 2009, there  
11 was a collection company in the San Francisco Bay Area that  
12 sent in corrections in the form of an AUD. It's called  
13 automated universal data form.

14 And this automated universal data form, this --  
15 company called Bay Area Collections was sending in these  
16 corrections. And the corrections all involved a Julie Miller  
17 that had a different Social Security number and a different  
18 date of birth.

19 But what was very strange about this is they sent in  
20 four. And each of the four had different addresses. And one  
21 of those four addresses had some data in common with  
22 Ms. Miller's address. It had the Maple Leaf Street address,  
23 and I think it had the same house number. And it had the zip  
24 code, but it even had a different state. It had California,  
25 instead of Oregon. And so because of that one similarity in --

1 in that AUD, all of the derogatory and harmful collections for  
2 the other Julie Miller got dumped onto Ms. Miller's credit  
3 report.

4 Q. Why did Equifax merge Ms. Miller with the other person  
5 when their identifying information did not match?

6 A. Because Equifax, to this day, despite those consent  
7 agreements where they emphasize the important of full  
8 identifying information --

9 MR. PERLING: Objection, your Honor, based on the  
10 same order.

11 THE COURT: Overruled.

12 Go ahead.

13 THE WITNESS: Thank you.

14 They -- they continued to tolerate what's called  
15 partial matches in Social Security number.

16 So Equifax says, oh, there's -- this is a seven out  
17 of nine match. They call it a maybe match or a sometimes  
18 match. And they will allow that to let them consider that this  
19 Mrs. Miller, here, is the same as the other one with 20  
20 collections.

21 And they also -- they disregard the date of birth.  
22 The date of birth was completely different, but it was within  
23 one year. So they -- they -- Equifax thinks, well, it's within  
24 year. Then we can just disregard that as well.

25 So it's because of their willingness to tolerate

1 discrepancies in very important identifiers -- you know,  
2 because each of us only have one Social Security number. That  
3 they will do this in an automated, combined way, without any --  
4 without any other procedures to go in for a closer look.

5 BY MR. JUSTIN BAXTER:

6 Q. Would you explain to the jury what a do-not-combine flag  
7 is.

8 A. A do-not-combine flag is -- is so if there are two files  
9 on consumers with similar identifiers, a do-not-combine flag is  
10 supposed to prevent those two files from merging together.

11 Q. Did Equifax insert a do-not-combine flag onto Ms. Miller's  
12 file?

13 A. At some point along the way, they did. They -- it -- it  
14 indicates there was a recognition of a danger of a mixed file.  
15 But I think it was too little, too late.

16 Q. Was that do-not-combine flag before or after the merge?

17 A. It was after the merge, to my recollection.

18 Q. In this case, did you see evidence that Equifax  
19 contractors failed to follow Equifax's written procedures?

20 A. Yes.

21 They -- at the point where Mrs. Miller had put in a  
22 dispute letter, which -- including the credit report which had  
23 all of the inaccurate information, they still failed to do a  
24 reinvestigation in those cases.

25 Q. In this case, were Equifax's procedures reasonable?

1 A. No. They were not reasonable. The -- first of all, it's  
2 not reasonable to disregard a consumer's Social Security  
3 number. And -- and the -- the partial matching and the merging  
4 of this information set off this horrible chain reaction.

5 Because they had the -- with the Social Security  
6 number, they had the same Social Security number in  
7 Ms. Miller's file since 1985, and they had the same date of  
8 birth. Yet in 2009, because one small collection company in  
9 San Francisco sent in an address which was similar to hers,  
10 they merged a file. And also -- and since 1995, Ms. Miller did  
11 not have one collection account on her -- in her file.

12 And so -- because of this one similar address, they  
13 merged dozens and dozens of collections, and they let the  
14 Social Security number of the other person basically devour and  
15 overtake her Social Security number.

16 And so there's -- there was -- there's no sort of  
17 pattern recognition. Like if our credit card company sees our  
18 credit card's being used in two or three different places at  
19 the same time, we're going to get a call from our credit card  
20 company. But they have nothing in place. What Equifax does  
21 have is they actually have this online combine function that  
22 flags when this merger took place.

23 So Equifax's system told Equifax that this merger  
24 took place, but they don't use this information to go in for a  
25 closer look. And despite the fact that they have all of this

1 notice from the early 1990s that this was the leading cause of  
2 problems.

3           So -- so -- and so what would be much more reasonable  
4 and prudent is if you had -- if you had an online combine that  
5 flags that this happened, you go in -- you have maybe an  
6 automated program or a human being look to see, wait a sec,  
7 this woman's file was clean since 1985. And all of a sudden  
8 it's -- you know, the Social Security number is changed, the  
9 date of birth has changed, and she's got 20-something  
10 collections on her account.

11           Because for a thing -- like for an account to become  
12 a collection, it's got to migrate to 30 days late, 60 days  
13 late, 120 days late, until its charge-off and collection. And  
14 Equifax's system has all of that, too, in their files.

15           The other problem is that when they created the --  
16 Equifax created this discrepancy. Ms. Miller had the same  
17 Social Security number forever. She only had one, like the  
18 rest of us.

19           But then the merging creates the discrepancy. And  
20 then when Ms. Miller contacts them, Equifax doesn't recognize  
21 who she is.

22           And then when they don't recognize who she is,  
23 instead of reinvestigating her dispute, there could be several  
24 steps in doing a reinvestigation. But one of the first ones is  
25 to send a notice to the collection company that's furnishing



1 the information.

2 They don't do that. They send her form letters  
3 saying, you know, we don't have -- your Social Security number  
4 you were providing us doesn't match our files because our files  
5 are already messed up.

6 Equifax doesn't recognize that. And so then, because  
7 they don't send a notice of reinvestigation notice to the  
8 collector, they don't start what's called an ACIS case. And if  
9 you don't start an ACIS case, then you can't refer back to her  
10 previous dispute letters.

11 So when she follows up with other disputes, where she  
12 already provided them with the credit report saying --

13 MR. PERLING: Objection, your Honor. We're far  
14 afield from the question here.

15 THE COURT: I think that we need a new question.

16 Please -- and I'm not trying to be critical here.

17 But, sir, you need to listen to the question and only answer  
18 that.

19 THE WITNESS: Okay.

20 MR. JUSTIN BAXTER: I'll move forward, Judge.

21 BY MR. JUSTIN BAXTER:

22 Q. Mr. Hendricks, to a reasonable degree of certainty, do you  
23 believe that what happened to Ms. Miller was foreseeable to  
24 Equifax?

25 A. Yes.

1 Q. In your research and reporting, have you identified  
2 categories of damages typically experienced by consumers,  
3 caused by inaccurate credit reports?

4 A. Yes.

5 Q. Can you list those seven categories?

6 A. Yeah, I first developed -- I realized that sometimes  
7 people had trouble understanding what -- what are the harms in  
8 this.

9 And so in 2003, in my testimony -- testimony  
10 before --

11 THE COURT: Excuse me, Mr. Hendricks. Please just  
12 answer the question asked. The seven categories.

13 THE WITNESS: Okay. The seven categories are to be  
14 inaccurately described by your credit report information:

15 To be improperly denied credit because of the false  
16 information on your credit report.

17 That those errors force you to expend time and energy  
18 to try and fix a mistake that was not of your making. To --  
19 and also when that happens, you lose the opportunity to do what  
20 you want to do; either work, or spend time with your family,  
21 or -- or -- or enjoy yourself.

22 And then there's -- you're chilled from applying for  
23 credit. Because once you realize you have this bad credit, you  
24 have 20 collections on your credit report, applying for credit  
25 is like banging your head against the wall. So that's another

1 harm that comes from this.

2 Most people who are victims of crime can -- actually  
3 complain about some sort of physical symptoms or sleeplessness.

4 Another category is the sense of helplessness and  
5 loss of control over the personal information, which is a  
6 central goal of the Fair Credit Reporting Act, and a lot of  
7 other information privacy laws.

8 And the final category is the -- the victims complain  
9 about the -- the mental anguish and the emotional distress and  
10 the frustration that's associated with all of those other  
11 categories.

12 BY MR. JUSTIN BAXTER:

13 Q. Did you have an opportunity to speak with Ms. Miller about  
14 how she was harmed by Equifax?

15 A. Yes.

16 Q. And to a reasonable degree of expert certainty, in your  
17 opinion, was it foreseeable to Equifax that Ms. Miller would  
18 experience these types of damages?

19 A. Yes. As I said, I published these back in 2004, 2003.

20 And I presented them to Equifax over and over again.

21 Q. Before the events in this case, did juries return verdicts  
22 for other consumers who repeatedly disputed inaccurate  
23 information in their credit file and whose information was not  
24 corrected by Equifax?

25 A. Yes. And I was the expert in those cases.

1 Q. When and where were those verdicts returned?

2 A. 2005, there was one in Oregon, in this very building.

3 2007, there was another one in this very building, just here in  
4 Oregon. And then in 2010, two summers ago, in the federal  
5 court in San Francisco.

6 Q. As a result of those verdicts, was Equifax on notice that  
7 inaccurate information in a consumer's credit file, which a  
8 consumer disputes but which Equifax does not correct, can  
9 result in a lawsuit and verdict against Equifax similar to this  
10 case?

11 A. Yes.

12 Q. To a reasonable degree of certainty, do you have a  
13 conclusion on whether Equifax issued a consumer report to a  
14 third party without a reasonable belief that it would be used  
15 in a credit transaction with Ms. Miller?

16 MR. PERLING: Objection, your Honor. Lacks  
17 foundation and knowledge for this witness.

18 THE COURT: Overruled. Go ahead.

19 THE WITNESS: Yes, they -- they sold information  
20 about Ms. Miller to other creditors, that Ms. Miller had never  
21 applied for credit with. There was a complete invasion of  
22 privacy.

23 BY MR. JUSTIN BAXTER:

24 Q. To a reasonable degree of certainty, do you have an  
25 opinion on whether Equifax followed reasonable procedures to

1 ensure maximum possible accuracy of the information in  
2 Ms. Miller's consumer reports?

3 A. Yes. As I discussed earlier, they -- not only did they  
4 not follow reasonable procedures, they disregarded all of the  
5 notice and all of the data in Ms. Miller's file. And -- and  
6 given the notice, that disregard was reckless.

7 Q. To a reasonable degree of certainty, do you have an  
8 opinion on whether Equifax clearly and accurately disclosed to  
9 Ms. Miller the contents of her credit file upon request?

10 A. Equifax did not disclose the information in her file,  
11 despite the requirement that they're supposed to disclose all  
12 of the information in her file when she requests it.

13 Q. To a reasonable degree of certainty, do you have an  
14 opinion on whether Equifax conducted a reasonable  
15 reinvestigation of each of Ms. Miller's disputes?

16 A. Equifax did not conduct a -- any type of investigation of  
17 her disputes because of the discussion we had earlier, about  
18 them not recognizing Ms. Miller because of the mistakes that  
19 Equifax had made.

20 And another part of this is that the dispute  
21 department in Equifax doesn't know how all of this partial  
22 matching works. So when they don't know about online combine  
23 reports and they don't know about --

24 MR. PERLING: Objection, your Honor. We're far  
25 afield again, and this lacks foundation. It also lacks

1 knowledge.

2 THE COURT: All right. We are going to do this one  
3 over. Disregard the last answer.

4 Ask the question again.

5 Answer only the question asked. If your counsel  
6 needs more from you, he will ask.

7 No narratives.

8 Go ahead.

9 MR. JUSTIN BAXTER: Yes, Judge.

10 BY MR. JUSTIN BAXTER:

11 Q. To a reasonable degree of certainty, do you have an  
12 opinion on whether Equifax conducted a reasonable  
13 reinvestigation of each of -- of each of Ms. Miller's disputes?

14 A. Yes, my opinion is they did not.

15 Q. To a reasonable degree of certainty, do you have an  
16 opinion on whether Equifax conducted itself as a reasonably  
17 careful consumer reporting agency?

18 A. No, they did not. They were reckless.

19 MR. JUSTIN BAXTER: Those are my questions, Judge.

20 THE COURT: Okay. Cross.

21 MR. PERLING: Yes, your Honor.

22 CROSS-EXAMINATION

23 BY MR. PERLING:

24 Q. Good morning, Mr. Hendricks.

25 A. Good morning, Mr. Perling.

1 Q. You've never worked for Equifax, have you?

2 A. No.

3 Q. And, in fact, you've never worked for any consumer  
4 reporting agency?

5 A. That's correct.

6 Q. You've never been trained by a consumer reporting agency  
7 as to how their system works?

8 A. That's correct.

9 Q. You've never been trained by a consumer reporting agency  
10 on how to write policies for that agency, have you?

11 A. That's correct.

12 Q. You've never been retained by a consumer reporting agency  
13 to write procedures, have you?

14 A. Correct.

15 Q. You've never been retained by a consumer reporting agency  
16 to do a survey of their policies or procedures for handling  
17 reinvestigations?

18 A. That's right.

19 Q. You've never devised a set of procedures that you believed  
20 would be appropriate reasonable procedures for a consumer  
21 reporting agency to follow as a whole in handling disputes,  
22 have you?

23 A. Correct.

24 Q. And you've never devised a set of procedures that you  
25 believe would be appropriate reasonable procedures for a

Hendricks - X

311

1 consumer reporting agency to follow as it relates to issuing  
2 disclosures to consumers either?

3 A. Right. On all of these things, I've only included some  
4 standards in my expert reports about how it would have been  
5 done better.

6 Q. You haven't done any type of analysis or study on any of  
7 these proposed items that you said you've included in your  
8 reports, have you?

9 A. What do you mean, analysis, study?

10 Q. You've never done any type of statistical analysis.  
11 Right? To see if the proposals that you had for other  
12 procedures or -- were feasible?

13 A. Right. I don't have access to the information. Only  
14 Equifax has -- is holding that information. And I don't think  
15 they'll give me access to it.

16 Q. All right. And you've never written a policy and  
17 procedure manual for a consumer reporting agency?

18 A. Correct.

19 Q. And you've never written a matching program for a consumer  
20 reporting agency?

21 A. That's correct.

22 Q. You've never worked at a bank?

23 A. That's right.

24 Q. You've never been employed in the financial services  
25 industry?



Hendricks - X

312

1 A. That's right.

2 Q. You've never been employed by the FTC?

3 A. No, I only was retained by them as an expert.

4 Q. Never as a direct employee though. Correct?

5 A. Correct.

6 Q. Never been employed as a computer programmer, anywhere?

7 A. That's right.

8 Q. You're not a lawyer?

9 A. Correct.

10 Q. You don't have any legal training?

11 A. No formal legal training, no. I teach a continuing legal  
12 education with the American Bar Association, and other groups.

13 Q. And that's part of a consumer advocacy program?

14 A. I mean, it's part of the continuing legal education that  
15 some of the attorneys have to take to -- it's a requirement of  
16 being an attorney for their bars, I think. Or state bar.

17 Q. You're not a doctor, are you?

18 A. No.

19 Q. You're not a psychologist?

20 A. No.

21 Q. You don't have any medical training?

22 A. Correct.

23 Q. You don't have any mental health training?

24 A. No, except being a parent. That gets you some on-the-job  
25 training.

1 Q. You don't have any specialized training in assessing  
2 damages, do you?

3 A. In credit reporting I do, yes.

4 Q. Training for assessing damages, like --

5 A. Yes.

6 Q. -- accounting-type training?

7 A. On-the-job training and through my experience.

8 Q. Self-training then?

9 A. Yes.

10 Q. So it's your statement that you've self-trained yourself  
11 in assessing damages?

12 A. Yeah. There's no one else to do it.

13 Q. Well, you're not an economist. Right?

14 A. No.

15 Q. You don't have an accounting degree?

16 A. Correct.

17 Q. Now, it -- it's fair to sum up and say that you're a  
18 journalist. Right?

19 A. That's -- yeah. That is one of the hats I wear is an  
20 editor of a specially newsletter, including an investigative  
21 journalist, which gives you standards of how to investigate  
22 something when you need to find out what is not true and what  
23 is true.

24 Q. And the other hat you wear is that of a proposed expert  
25 witness. Right?

1 A. Well, I'm an accomplished expert witness, and I've been  
2 recognized several times, including cases with Equifax.

3 Q. Those are two hats, though: One journalist and one as an  
4 expert witness. Right?

5 A. Well, then I've also been a consultant to the U.S. Social  
6 Security Administration and a consultant to private companies.  
7 So that's another hat.

8 Q. Well, currently, more than half of your employment is as  
9 an expert. Right?

10 A. That's correct, yes.

11 Q. The other half of your income comes from your newsletter.  
12 Correct?

13 A. Yeah. It's even more than half now from expert witness  
14 work, because print journalism is not as profitable as it used  
15 to be.

16 Q. In fact you have, fair to say, less than 200 subscribers  
17 to your newsletter?

18 A. That's correct.

19 Q. Now, this newsletter that you publish, that's the *Privacy*  
20 *Times*?

21 A. Yes.

22 Q. You self-publish that. Right?

23 A. Yes.

24 Q. You're the only contributor?

25 A. Pretty much, yes.

1 Q. There's no editorial board to that letter, is there?

2 A. That's correct.

3 Q. And there's no peer review?

4 A. Well, there's certainly peer review from the -- the  
5 readers are my peers. And if they see something that's  
6 incorrect, they -- those peers let me know right away.

7 Q. That's after you publish it though. Right?

8 A. Yes, that's right. There's nothing before publishing  
9 that's peer reviewed.

10 Q. You've published a book, too. Right?

11 A. Yes, sir.

12 Q. And you self-published that as well?

13 A. Yes.

14 Q. And the acknowledgments that you -- that you have in your  
15 book are from attorneys who represent plaintiffs against  
16 consumer reporting agencies like Equifax and against creditors.  
17 Right?

18 A. Right. Because of those attorneys, they fleshed out  
19 information on the internal workings of credit reporting  
20 agencies and big credit card companies.

21 Q. Those are the same attorneys who have a financial interest  
22 in suing consumer reporting agencies?

23 A. I think that's fair, yes.

24 Q. Now, your only degree is in political science. Right?

25 A. Yes.

Hendricks - X

316

1 Q. You don't have any other formal education, do you?

2 A. No.

3 Q. You don't have any education in computer programming?

4 A. We covered that.

5 Q. You don't have any education in matching logic?

6 A. That's right.

7 Q. You don't have a mathematics degree?

8 A. Correct.

9 Q. You've never taken a computer-related college course, have  
10 you?

11 A. Yeah, they didn't have computer-related college courses  
12 back in the '70s.

13 Q. I understand. But you haven't taken any since then?

14 A. No.

15 Q. You don't have any training in statistics?

16 A. Correct.

17 Q. You don't have any post-graduate work? You don't have any  
18 graduate college -- after-college degree? You don't have any  
19 graduate work?

20 A. That's correct.

21 Q. It's fair to say you consider yourself a consumer  
22 advocate. Right?

23 A. I -- I have played that role, yes.

24 Q. And you're a member of a group called NACA, N A C A?

25 A. Yes.

Hendricks - X

317

1 Q. That's the National Association of Consumer Advocates.

2 Right?

3 A. Correct.

4 Q. That's a group that's made up mostly of plaintiffs

5 lawyers. Right?

6 A. Right. That do consumer law work.

7 Q. And that includes the lawyers who represent the plaintiff

8 here. Right? They're members of that group?

9 A. Yes.

10 Q. In fact, if you're a lawyer and you don't represent

11 plaintiffs, you're not allowed into the group. Right?

12 A. Right. They have a screening function.

13 Q. In fact, they wouldn't let me in if I wanted to join,

14 would they?

15 A. No.

16 Q. You're being paid to be here, aren't you?

17 A. Yes.

18 MR. PERLING: Those are my questions. Thank you.

19 THE COURT: Redirect.

20 MR. JUSTIN BAXTER: No questions, Judge.

21 THE COURT: All right. Thank you, Mr. Hendricks.

22 You're free to go.

23 MR. JUSTIN BAXTER: Plaintiff rests.

24 THE COURT: All right.

25 All right. Do you have a matter we need to address

Colloquy

318

1 before we continue?

2 MR. PERLING: Yes, your Honor, we do.

3 THE COURT: So, jurors, would you step out to the  
4 jury room, please, for just a few minutes.

5 THE WITNESS: I'm not sure if I'm excused.

6 THE COURT: You're free to go. Yes.

7 And, jurors, step out to the jury room for just a few  
8 minutes, please, and I'll give you a cue about what our  
9 schedule will be, going forward, in just a moment.

10 (Jurors exit.)

11 THE COURT: So Mr. Hendricks, you're free to actually  
12 leave or you can stay, since your testimony is concluded.  
13 That's up to you.

14 All right. Everyone can be seated.

15 And for the defense?

16 MS. SUMNER: Your Honor, we would like to present to  
17 you a Motion for Judgment as a Matter of Law. But we would  
18 request a very brief recess, so that we can consider the  
19 testimony from this morning to --

20 THE COURT: Counsel, you've been doing this a long  
21 time. Make your motion now, and let's go.

22 We don't need to overcomplicate this. You all know  
23 what the issues are. We've worked through the jury  
24 instructions on many occasions.

25 So please just make the motion you think I should

1 consider, and I will rule.

2 Let's go.

3 MR. PERLING: Thank you, Judge. I will make that  
4 motion on behalf of Equifax.

5 As you anticipate, Equifax moves under Rule 50, at  
6 this point, for judgment as a matter of law.

7 There are, as we've seen in the proposed charges,  
8 several sections that the plaintiff is suing under.

9 First, I would like to address Section 1681b, your  
10 Honor.

11 The section -- the law states that any consumer  
12 reporting agency may furnish a consumer report under the  
13 following circumstances: To a person which it has reason to  
14 believe intends to use the information in connection with a  
15 credit transaction involving the consumer.

16 Here, Judge, we don't believe -- it's our position  
17 that the evidence doesn't support the findings of the elements  
18 here.

19 Plaintiff testified that she does not do business  
20 with certain entities, which she identified on consumer  
21 disclosures. But she doesn't have evidence outside of the fact  
22 that there is just an inquiry on the credit file. And she says  
23 that, essentially, she doesn't do business with that company.  
24 Does the third party actually receive the consumer reports? I  
25 think there's a gap here in the factual presentation.



1 In other words, your Honor, it's plaintiff's burden  
2 to go get those credit reports. Those should be before the  
3 jury in order to charge the jury on Section b. The jury needs  
4 to be able to see that Equifax in fact produced a credit report  
5 to that company.

6 And there's no evidence that the reports -- further,  
7 if they were received -- contained information regarding  
8 plaintiff, as opposed to the other Julie Miller.

9 I think that one important statement that came out in  
10 the deposition of DeeDe Mixon, that was read today, was the  
11 following, that I'll read just briefly, your Honor.

12 When Ms. Miller applies for credit and her  
13 creditor requests a copy of her credit report,  
14 does Equifax transmit a credit file to that  
15 creditor?

16 She responded: I honestly can't answer what would  
17 be provided to the creditor based upon what they  
18 entered to access the consumer's credit report.

19 Being that the information did not match, I cannot  
20 say for certain if a creditor would have received  
21 a file for Ms. Miller.

22 Now, based on that, I -- I think it's clear that the  
23 plaintiff had a burden to go one step further. And that's  
24 where the gap comes in. And that is to present the credit file  
25 that that third party received, and show that it wasn't her

1 information.

2           There's a second element, of course, to this part,  
3 your Honor, about the reason-to-believe factor.

4           The factor is Equifax would have to have reason to  
5 believe that the consumer report would not be used by a third  
6 party in a credit transaction involving plaintiff or the other  
7 Julie Miller. There's no evidence of supporting that finding.  
8 There is no reason to support that Equifax didn't believe that  
9 the credit report inquiry -- the credit report that went out on  
10 inquiry belonged to the Miller -- Julie Miller, the plaintiff,  
11 at the time of the disclosure or that the transaction did  
12 involve Ms. Miller.

13           There's, again, a gap here. That the plaintiff has  
14 to show that Equifax did not have reason to believe that that  
15 inquiry related to the person, the plaintiff here, at the time  
16 it was made.

17           Further, there's no evidence that plaintiff has --  
18 she hasn't provided any support that this particular claim  
19 caused her damage.

20           THE COURT: All right. Let's take up argument on a  
21 claim-by-claim basis.

22           MR. PERLING: Yes, your Honor.

23           THE COURT: So this actually translates to the fourth  
24 claim for relief in the context of the analysis set out in the  
25 jury instructions.

1           Go ahead, Mr. Baxter.

2           MR. JUSTIN BAXTER: Judge, I asked Ms. Leslie this  
3 morning if a creditor requested a credit file from Ms. Miller,  
4 would they get the merged file? The answer was yes.

5           I asked if a creditor for the other person requested  
6 a merge -- requested a credit file for that person, would they  
7 get a merged file? The answer was yes.

8           There are inquiries on the credit reports in the time  
9 frame that Ms. Miller has identified as not her creditors. So  
10 those would be credit transactions involving the other person.

11           As to whether Equifax had a reasonable belief it  
12 would be used for that purpose, after January of 2010,  
13 Ms. Miller had put Equifax on notice that her file was a mixed  
14 file, and so the jury could find that it was not reasonable  
15 to -- to continue transmitting that merged file.

16           And then as to damages, I think Ms. Miller testified  
17 to her damage.

18           THE COURT: The Court has to apply, at this stage, a  
19 standard that views the evidence only in the light most  
20 favorable to the plaintiff, that considers both direct and  
21 circumstantial evidence that's in the case, and all of the  
22 reasonable inferences that can be drawn from that evidence only  
23 in plaintiff's favor.

24           For the reasons Mr. Baxter just enumerated, any  
25 rational juror could connect the dots without speculation,

1 here. And so the defendant's Motion for Judgment as a Matter  
2 of Law against the fourth claim for relief for insufficiency of  
3 evidence on the three bases asserted is denied.

4 Next motion.

5 MR. PERLING: Thank you, your Honor.

6 The other specific section that we'll be moving under  
7 is the Section e(b) claim.

8 While we generally would make the motion that the  
9 Section g and i(a) claims are not supported, I will argue for  
10 the Court the Section e(b) claims specifically, which is --  
11 Section e(b) states that whenever a consumer reporting agency  
12 prepares a consumer report, it shall follow reasonable  
13 procedures to ensure maximum possible accuracy of the  
14 information concerning the individual about whom the report  
15 relates.

16 It's a similar argument, your Honor, here, because  
17 there has not been presented to the jury an actual credit  
18 report upon which they can base a determination that that  
19 credit report went to a third party, and it contained  
20 inaccurate information.

21 Again, the gap, as we would put it, your Honor, is  
22 that the plaintiff needs to come forward with evidence --  
23 actual evidence -- for instance, if she wanted to support that  
24 KeyBank is the basis for their Section e(b) claim, they needed  
25 to go one step further with KeyBank and get the actual credit

1 report that KeyBank received, show it to the jury, so that they  
2 can make a factual finding that that report to KeyBank, being  
3 about the plaintiff, contained inaccurate information about  
4 her. And that is the basis for our motion on Section e(b).

5 We also submit to your Honor that plaintiff has not  
6 submitted any proof of the actual procedures that Equifax had  
7 in place from -- from compiling the consumer reports. And that  
8 we have submitted evidence that -- or the evidence shows that  
9 the merging of the files was not an unreasonable procedure.

10 THE COURT: Mr. Baxter.

11 MR. JUSTIN BAXTER: Judge, on the e(b) claim, the  
12 standard under **Diamond**, is that the plaintiff makes her prima  
13 facie case by showing that there's false information on the  
14 credit report.

15 In Ms. Mixon's deposition testimony, she testified  
16 that KeyBank requested a consumer report and Equifax returned a  
17 consumer report. And we have the adverse action letter from  
18 KeyBank that says that she was denied based on delinquencies  
19 and derogatory information in her Equifax credit report;  
20 circumstantial evidence of the false information in the -- in  
21 the consumer report.

22 Ms. Leslie also testified, again, that there was a  
23 request by Ms. Miller's creditors for a credit file. That  
24 Equifax would return the merged file. And there are numerous  
25 inquiries on Ms. Miller's credit reports.

1 THE COURT: For the reasons similarly stated with  
2 respect to the defendant's motion against the fourth claim, I'm  
3 denying the motion against the first claim.

4 This is the sole so-called e(b) claim under Section  
5 1681e(b). The links to which the defendant is pointing to  
6 assert a failure of proof are links that are filled with  
7 reasonable inferences, and inferences that are required to be  
8 drawn in the plaintiff's favor, based on the evidence already  
9 adduced and highlighted in part just now by Mr. Baxter.

10 It would not be hard for a rational trier of fact to  
11 conclude, under the circumstances, and particularly after the  
12 plaintiff put Equifax on actual notice of the errors, that  
13 there were -- there was a failure to use reasonable procedures  
14 to provide maximum possible accuracy of the information in her  
15 report. That likelihood is only increased over the sequential  
16 and numerous repetitions by the plaintiff to address the issue.

17 So I don't know how one could argue that seven  
18 inquiries, by a person in Ms. Miller's shoes, that went  
19 essentially unnoticed and unresponded to by a consumer  
20 reporting agency, is the equivalent of concluding there exists  
21 reasonable procedures.

22 The mere repetition of this process is sufficient,  
23 from which rational triers of fact could conclude that the  
24 procedures were not reasonable. And we have the testimony of  
25 Mr. Hendricks. And we have the testimony in the plaintiff's

Colloquy

326

1 case of the defendant's own agents that the processes did not  
2 respond appropriately.

3 So this motion is denied.

4 Are there other grounds we have to address before I  
5 bring the jury back?

6 MR. PERLING: Yes, your Honor.

7 I would like to step through the Section 1681g claim.

8 THE COURT: Okay. And that would be the third claim  
9 for relief.

10 MR. PERLING: That would be the third claim.

11 Section g states every consumer reporting agency  
12 shall, upon request and subject to Section h(a)(1) of this  
13 title, clearly and accurately disclose to the consumer all  
14 information in the consumer's file at the time of the request.

15 And, of course, Section g refers to h(a)(1), which  
16 reads:

17 A consumer reporting agency shall require, as a  
18 condition of making the disclosure required under  
19 Section g of the title, that the consumer furnish  
20 proper identification.

21 The elements that plaintiff requested a consumer  
22 disclosure may be present, your Honor, but the proper  
23 identification identifiers, in some instances, were not  
24 provided.

25 I think plaintiff admitted, in some certain

1 instances, that she only provided partial -- part of her Social  
2 Security number.

3 Also, she -- the next element is that Equifax failed  
4 to provide a disclosure. There is actually evidence that  
5 Equifax provided some disclosures.

6 And plaintiff has to prove that Equifax caused her  
7 damages as a result, and it's Equifax's argument that these  
8 elements have not been met.

9 THE COURT: I don't need to hear from you,  
10 Mr. Baxter.

11 In the light most favorable to the plaintiff, a  
12 rational juror could find evidence to support each of the  
13 elements of this claim, as I've discussed them with counsel and  
14 laid out in the proposed jury instructions. That Ms. Miller  
15 may not, each and every time that she responded to Equifax,  
16 have not provided all of the information requested repetitively  
17 and, frankly, not responsive to the plaintiff, that Equifax was  
18 demanding, isn't the question.

19 The question is whether, viewing the totality of the  
20 evidence and viewing it in the light most favorable to a  
21 plaintiff, whether a jury could find that there was at least  
22 one occasion when the -- this section of the act was not met by  
23 the defendant, and that it was unreasonable to do so.

24 So all of the damages arguments are, again, the same.  
25 Ms. Miller has testified specifically about the distress, the



Colloquy

328

1 frustration, and the repetitious nature of that which caused  
2 escalation of those damages for each and every encounter with  
3 the credit reporting agency; here, Equifax.

4 And so this claim can go to the jury on all of its  
5 elements.

6 Go ahead.

7 MR. PERLING: Lastly, your Honor, we would like to  
8 address the willfulness claim.

9 THE COURT: I'm sorry?

10 MR. PERLING: We would like to address the  
11 willfulness claim, your Honor.

12 THE COURT: Okay.

13 MR. PERLING: Under Section 1681n(a)(2), any person  
14 who willfully fails to comply with any requirement imposed  
15 under the subchapter with respect to any consumer may be liable  
16 to that consumer in an amount equal to the sum of any actual  
17 damages and any amount of punitive damages as the Court may  
18 allow.

19 The **Safeco** case is the case that has defined the  
20 willfulness conduct under this section. The U.S. Supreme Court  
21 case.

22 THE COURT: It started here, by the way, in this  
23 room, with this judicial officer. Okay.

24 MR. PERLING: Yes, your Honor.

25 THE COURT: Go ahead.

1 MR. PERLING: And, of course, the **Safeco** case says  
2 that for willfulness claims, the defendant must have engaged in  
3 much more than just unreasonable conduct. It must have run a  
4 risk of violating the law substantially greater -- being the  
5 words of the -- of the court there -- than the risk associated  
6 with mere carelessness.

7 In this case, your Honor, the only evidence is that  
8 Equifax combined the files, made some -- some human errors  
9 and -- in responding to that. And the focus should be on  
10 Equifax as a whole, not the actions of its -- of the individual  
11 agents in isolation, in -- in making some errors and responding  
12 to them.

13 There's no evidence of any ill will towards the  
14 plaintiff. Equifax did not run the risk of violating the law  
15 substantially greater than the risk associated with mere  
16 carelessness. And this goes to the line of cases that talks  
17 about human errors.

18 Plaintiff has no evidence regarding Equifax's  
19 procedures in place, yet. There's no evidence that Equifax  
20 generally fails to follow its procedures, only some anecdotal  
21 evidence of failure to file that.

22 There's no evidence that Equifax improperly trains  
23 its agents, and no statistical evidence regarding an error  
24 rate. Those are the types of things that might support a  
25 finding of running a risk substantially greater than the risk

1 of just mere carelessness, your Honor.

2 THE COURT: In this case, viewing the evidence in the  
3 light most favorable to the plaintiff, Equifax was on notice of  
4 its duties for years, before Mrs. Miller encountered her  
5 difficulties with Equifax.

6 Equifax was on notice of the risk of merged files, or  
7 mixed files, and the particular problems they create for the  
8 consumers involved.

9 Equifax's own system, as it was explained by  
10 Mr. Hendricks, had a linear automated responsive track that  
11 never appreciated that a human being -- that never had in fact  
12 a human being involved in this automated repetitious response  
13 to the plaintiff.

14 So having a system of that nature, given the course  
15 of conduct here and given the notice that Equifax had of the  
16 significant risk that mixed files present, would lead any  
17 rational trier of fact -- without resort to studying  
18 statistics -- to a conclusion that there was a very high risk  
19 that if the response to this kind of problem was the type  
20 Equifax automatically gave in this case, it would not address  
21 the risk, and therefore, there would be an unacceptable and,  
22 indeed, a substantially high risk that each one of the  
23 violations plaintiff asserts here would occur.

24 This is an analysis that is separate and apart --  
25 apart from a failure to use due care or reasonable care. And,

1 as you already know in the ongoing jury instruction discussions  
2 we've been having, there isn't -- there has been planned -- and  
3 I will make clear to the jury -- the difference between conduct  
4 that is merely negligent and conduct that is sufficient to  
5 trigger a finding of willfulness. That conduct, here, is in  
6 the nature of (pause, referring) reckless disregard of an  
7 unjustifiably high risk of the very harm that the plaintiff  
8 sustained; and a harm that is -- is sustained if one views the  
9 evidence in the light most favorable to the plaintiff, and of a  
10 harm that is exactly the type explicitly addressed in each of  
11 the four sections here.

12 So there is a jury question on willfulness. There's  
13 more to the case, I'm sure, to be developed. But on this  
14 record, it would be error for me not to submit each of the  
15 claims and the willfulness issue to the jury. So that motion  
16 is denied.

17 Anything else before we continue?

18 MR. PERLING: Nothing further from Equifax.

19 THE COURT: All right. I didn't anticipate it would  
20 take this long, so I have got the jury sitting, and I want to  
21 deal with that first.

22 Let me just get a brief preview from you, Counsel,  
23 about who's coming first for the defense, the timing of your  
24 particular witnesses; so that I can get a schedule set, please.

25 MS. SUMNER: So, your Honor, we will first call Anne

1 Fortney. Followed by Anne Fortney, we will call Ms. DeeDe  
2 Mixon. And following Ms. Mixon -- Mixon, we will call Margaret  
3 Leslie back to the stand.

4 THE COURT: So how long were you expecting for  
5 Ms. Fortney?

6 MS. SUMNER: I suspect that I will probably take an  
7 hour to an hour and a half.

8 THE COURT: And Ms. Mixon?

9 MR. PERLING: Same.

10 MS. SUMNER: Probably about the same.

11 And I suspect that Ms. Leslie will probably be about  
12 as long, as well.

13 THE COURT: Okay. Ms. Boyer, would you excuse the  
14 jury, please, for lunch. Remind them of the standard  
15 instruction, and ask them to be back and ready to go at 1:15.

16 All right. Counsel, I'm going to ask my law clerk to  
17 pass out to you an updated version of the jury instructions,  
18 which is a third draft. That takes into account what we talked  
19 about earlier, not necessarily literally incorporating what we  
20 discussed.

21 So I want you to go back through -- not right this  
22 second. But I want you, over the noon break, to go back  
23 through. And then we'll resume at 1:15.

24 So I -- I want you to know, with respect to punitive  
25 damages, I went back to the Ninth Circuit model instruction, to

1 satisfy myself at least that what is there tracks with the  
2 model instruction on the recklessness standard only. I did not  
3 include in this text malice or oppression. And so I want you  
4 to look back at the law, and the standards that would trigger  
5 those, and tell me if we -- I need to work that back in, from  
6 your perspective.

7 But we'll take that up at 1:15.

8 So you have a clean set from which to work.

9 Any other issues for the record right now?

10 MS. SUMNER: No, your Honor. Thank you.

11 MR. JUSTIN BAXTER: No.

12 THE COURT: See you at 1:15.

13 Thank you.

14 MR. EDELSON: Thank you.

15 (Recess taken.)

16 THE COURT: All right. Let us turn to the third  
17 draft of jury instructions.

18 Mr. Baxter, take me to your first concern, if any.

19 MR. JUSTIN BAXTER: Everything is fine, with one  
20 exception. We would request the sentence on -- oh, it's there.  
21 I'm sorry. I missed it. Net worth is there. We're good to  
22 go.

23 THE COURT: You don't have any proposed changes,  
24 then, to the third?

25 MR. JUSTIN BAXTER: No.

1 THE COURT: All right. Okay. Mr. Edelson.

2 MR. EDELSON: Thank you, your Honor.

3 I'm not going to rehash the one we already talked  
4 about and reserved this morning. But I will --

5 THE COURT: And that one is the emotional distress  
6 listing or --

7 MR. EDELSON: That's correct. That's correct.

8 THE COURT: All right.

9 MR. EDELSON: So I want to focus on the punitive  
10 damage one.

11 THE COURT: Okay.

12 MR. EDELSON: Let me try to explain the concern that  
13 we have on this side of the court.

14 You know, punitive damages -- the thing that comes  
15 from that model instruction is it emphasizes the seriousness of  
16 a punitive damage award.

17 And I made that point earlier this morning, and I  
18 don't want to be repetitive. But that when you pull out  
19 malicious -- and I'm going to remind you that plaintiff has  
20 argued that Equifax has lied, in their opening. They said  
21 Equifax's behavior has been reprehensible. I thought  
22 Mr. Hendricks' testimony went -- he was emphatic about the  
23 recklessness of it. I think they have put out there arguments  
24 that this is something really horrible.

25 And even in the opening remarks by Ms. Sumner, we

1 understood we were up against this broader kind of punitive  
2 damage claim. And although it may seem peculiar for us to ask  
3 for a broader instruction, the fact that that instruction --  
4 the standard instruction uses words like "malicious" and  
5 "oppressive" --

6 THE COURT: Let me -- let me give you a little bit of  
7 background, first, on the instruction -- the model instruction,  
8 which I happen to know about, because I was chair of the  
9 committee that prepared it.

10 It was written in order to provide lawyers and trial  
11 judges with what would be necessary in order to submit such a  
12 claim to the jury. And it was written expansively, with an  
13 idea that when evidence supports all of those things, you  
14 include them all. And if evidence does not support alternative  
15 and disjunctive classifications of criterion that would justify  
16 the award, you wouldn't have it.

17 So the model says you may award such damages only if  
18 you find the conduct was malicious, oppressive, or in reckless  
19 disregard.

20 There has never been a suggestion, that I am aware  
21 of, that a plaintiff would have to show that conduct was  
22 malicious, oppressive, and in reckless disregard. And to  
23 introduce to the jury a standard around which there is not  
24 evidence is irresponsible by the Court.

25 So I understand the point. What I'm wanting -- and



Colloquy

336

1 the reason I interrupted is I want you to tell me what evidence  
2 there is in the case that would support an instruction on  
3 malicious conduct or on oppressive conduct, based on the  
4 definitions of those conduct -- of -- of those terms; and if it  
5 is this model instruction that you're working from, which I  
6 think it is.

7 MR. EDELSON: Well, I'm certainly not going to argue  
8 that there's evidence of malicious conduct.

9 THE COURT: Then I can't instruct on it.

10 MR. EDELSON: And with respect to oppressive, we  
11 don't -- we're not insisting or even requesting that oppressive  
12 be --

13 THE COURT: So tell me what you think you want.

14 MR. EDELSON: What we would like is that it not be so  
15 diluted that the heavy weight of this kind of award is -- is  
16 lost.

17 THE COURT: So tell me language that you would  
18 propose adding.

19 MR. EDELSON: Well, I've written some language that  
20 goes like this:

21 Punitive damages should only be awarded in the  
22 most egregious of circumstances.

23 THE COURT: That's a comment on the evidence, and I'm  
24 not going to say that to the jury.

25 MR. EDELSON: Well, again, I know it wasn't perfect,

Colloquy

337

1 and I'm just looking for a way to carry -- just so it's not so  
2 diluted.

3 THE COURT: Let's do this, Mr. Edelson, until I  
4 instruct the jury, you're free to ask for changes. You  
5 don't -- obviously have something you're suggesting, now, is a  
6 correct statement of the law.

7 All you're doing to me is expressing concern that by  
8 instructing the jury only on a reckless state of mind, somehow  
9 this instruction doesn't put before the jury the serious issue  
10 that is different from -- I think it does. I think it's a fair  
11 statement of the law.

12 Find me something or write something that you can  
13 point to that has support from a court that has given it.  
14 Maybe look at other credit cases.

15 I've instructed on punitive damages before. I didn't  
16 go back to see what I did in the **Ashby** case, but I might look  
17 that up, and I'll see what I can do. But right now the law --  
18 you're not conceding there's evidence that supports malice, and  
19 you're not conceding there's evidence that supports oppression.  
20 In fact, your colleague said there wasn't even evidence to  
21 support recklessness, so I'm not going to instruct on a  
22 standard for which there's no evidence. That's the rule.

23 Now --

24 MR. EDELSON: I have another suggestion.

25 THE COURT: Okay.

Colloquy

338

1 MR. EDELSON: As sort of partway there.

2 THE COURT: Yes.

3 MR. EDELSON: And I will take you up on your offer to  
4 think about better language than I did a moment ago.

5 THE COURT: Yes.

6 MR. EDELSON: If you look at the sentence that's on  
7 page 21, it's the end of the first sentence of the -- of the  
8 new paragraph.

9 THE COURT: "Conduct is in reckless disregard." That  
10 sentence?

11 MR. EDELSON: "If you find the plaintiff's conduct."

12 THE COURT: "You may award punitive damages only if  
13 you find that defendant's conduct that harmed plaintiff was in  
14 reckless disregard of the plaintiff's rights. But you may not  
15 award punitive damages if you find that defendant's conduct was  
16 merely negligent."

17 MR. EDELSON: And I would add at the end, "or  
18 careless."

19 THE COURT: That's fine. That's a correct statement  
20 of the law.

21 MR. EDELSON: So -- well, we'll see if we can come up  
22 with other language on the other issue.

23 THE COURT: You don't object to the addition of  
24 "careless," do you, Mr. Baxter? That comes out of the **Safeco**  
25 case.

Colloquy

339

1 MR. JUSTIN BAXTER: That's fine.

2 THE COURT: I'll add "or careless," and if you have  
3 other language you want me to consider, I'll consider it.

4 MR. EDELSON: I would like to mention one other item.

5 THE COURT: Yes, sir.

6 MR. EDELSON: That would be a new instruction.

7 And it's a -- I suppose you call it a limiting  
8 instruction.

9 We have -- Ms. Miller testified -- and Ms. LeGore has  
10 that section, if your Honor would like to hear it -- that she  
11 did not suffer any physical harm as a result of Equifax's  
12 conduct.

13 And then we had witnesses come up and speculate about  
14 acne and hair loss, when their only basis of information was --  
15 was what they learned from Ms. Miller.

16 Physical injury has not been part of this case.

17 THE COURT: I think the first thing you ought to be  
18 doing, then, is moving to strike that evidence or at least  
19 telling me to instruct the jury, now, that those issues are not  
20 before me.

21 MR. EDELSON: That's precisely what I'm asking for.

22 THE COURT: So on what basis should the jury be  
23 concerned with acne and hair loss, if any?

24 MR. EDELSON: And sleeplessness --

25 THE COURT: Or do you agree that that's an issue that

Colloquy

340

1 should be -- the jury should be directed away from?

2 Because we don't have any evidence in the record from  
3 which rational jurors could find that hair loss was actually  
4 attributed to the stress. And we do have other concerns.

5 That -- there are a lot of reasons as Ms. Miller's  
6 witness/neighbor, who's the hairdresser, explained for which  
7 hair loss can occur. The jury would have to speculate that the  
8 hair loss issue was related to her anxiety about this problem.

9 And Mr. Miller's reference to acne reoccurring seems  
10 sort of in a way nonresponsive to the question that was being  
11 asked of -- by Mr. Baxter, but it wasn't addressed at the time.

12 To -- to me, those are two issues that were really  
13 outside the scope of what the case looked like when we started  
14 it. And, to me, the fair thing to do is just simply tell the  
15 jury that those are not claims in the case.

16 (Pause, Mr. Justin Baxter and Mr. Michael Baxter  
17 conferring.)

18 MR. JUSTIN BAXTER: That's fine, Judge.

19 THE COURT: I'll do that without a heavy hand. I'll  
20 simply tell them there were references to Ms. Miller  
21 experiencing hair loss and acne. Those are not actual claims  
22 in the case, and the jury is to disregard those when they  
23 evaluate the evidence.

24 MR. EDELSON: I left out sleeplessness, which  
25 Ms. Miller did not testify to but one of her friends did. But

1 on cross, admitted that she didn't actually observe any  
2 sleeplessness.

3 THE COURT: Then I'm not going to address  
4 sleeplessness.

5 I think to do that puts undue emphasis on it. We  
6 have a lot of emphasis on hair and acne.

7 And you can argue about the sleeplessness issue if  
8 they bring it up. But I don't think it's an issue around which  
9 there could be any potential error.

10 Sleeplessness, by the way, I think is something that  
11 rational jurors could themselves connect. Hair loss and acne  
12 are -- are different. I think we all experience sleeplessness  
13 or know of people who experience that when they're unhappy,  
14 distressed, frustrated to the point or the degree that was  
15 described.

16 So other than one more round around punitive damages,  
17 is there any other concern, Mr. Edelson, you want me to keep in  
18 mind around these jury instructions?

19 MR. EDELSON: No. Thank you, your Honor.

20 THE COURT: We'll add the word "careless" in that  
21 sentence that ended with "negligent." And I'll wait to see if  
22 you have something. I, in the meantime, will see if I can find  
23 the **Ashby** jury instructions and see how it looked there. If I  
24 can find it, I'll share that with you.

25 MS. SUMNER: Your Honor, just one issue for

1 clarification.

2 Anne Fortney will be testifying next, who is, of  
3 course, our expert. And I know that you had --

4 THE COURT: Yes.

5 MS. SUMNER: -- previously instructed not to refer to  
6 prior witness testimony. But because she is our rebuttal  
7 expert, may I be permitted to refer to Mr. Hendricks'  
8 testimony?

9 THE COURT: What I was directing counsel away from  
10 was what sounded like one witness being invited to comment on  
11 the credibility of another trial witness, and that's not to  
12 happen.

13 You certainly are entitled to lay a foundation for  
14 rebutting opinions.

15 MS. SUMNER: Thank you.

16 THE COURT: Okay.

17 MR. JUSTIN BAXTER: One more item, your Honor.

18 THE COURT: Yes.

19 MR. JUSTIN BAXTER: Now that we've passed the  
20 directed verdict, we have a stipulation with the defense on net  
21 worth, and I just want to make sure that we find time --

22 THE COURT: What is it?

23 MR. JUSTIN BAXTER: The -- Equifax and plaintiff  
24 agree that the net operating revenue of Equifax Information  
25 Services is 900 million dollars, which is a representation of

Colloquy

343

1 the net worth of Equifax.

2 THE COURT: All right. When is it you're proposing  
3 that information be provided to the jury?

4 MS. SUMNER: Well, I thought we had agreed that it  
5 would be at the close of evidence, that we would do --

6 THE COURT: All of the evidence?

7 MR. JUSTIN BAXTER: That's fine as well. I just want  
8 to make sure it gets read.

9 MS. SUMNER: And just -- I hate to parse words, but  
10 to be precise --

11 THE COURT: Why don't you write it out then.

12 MS. SUMNER: Thank you. We'll do that.

13 THE COURT: And is this something you want me to read  
14 to the jury, or do one of you want to read it to the jury at  
15 the appropriate time?

16 MS. SUMNER: Your Honor, I would be happy to do that  
17 on behalf of Equifax, since we're talking about an Equifax  
18 number.

19 THE COURT: All right. Then we all have to remember  
20 to refer to it.

21 So when the jury comes back, I'm going to remind them  
22 that the plaintiff has rested, which means plaintiff's offered  
23 all of the evidence she's going to offer in her case-in-chief,  
24 and now we're going to turn to the defendant's testimony.

25 Ms. Miller, would you like to come back to the table?



Colloquy

344

1 Maybe that's not the way the question should be framed. I  
2 don't think anybody likes being here.

3 Is Ms. Fortney here? Fortney?

4 MS. SUMNER: Yes, she is.

5 Oh, there she is, yes. Would you like her to take  
6 the stand?

7 THE COURT: Yes. Yes.

8 All kinds of familiar things going on around here.

9 MR. EDELSON: Do you want her to take the stand?

10 THE COURT: Like they say, deja vu all over again.

11 Why don't you come up here, and then when the jurors  
12 are in, we'll have you sworn.

13 (Pause, Court and witness conferring.)

14 THE COURT: Would you all please rise for the jury.

15 (Jurors enter.)

16 THE COURT: Thank you, everyone. Please be seated.

17 So, jurors, good afternoon.

18 Just before I sent you out for the noon recess, you  
19 may recall Mr. Baxter announced that plaintiff rests. That  
20 means, Ms. Miller's counsel have now presented all the evidence  
21 that there is going to be presented in her case-in-chief.

22 So now we're turning to Equifax, to see if it has any  
23 evidence to offer. And, indeed, it does have three witnesses  
24 to offer to you. One of them is before you now.

25 Would you stand, please. Face the jury. Raise your

Fortney - D

345

1 right hand to be sworn.

2 (Witness sworn.)

3 THE WITNESS: I do.

4 THE CLERK: Please take a seat.

5 THE COURT: And when you're situated there, bring  
6 yourself as close as you can to the microphone.

7 Please tell us your full name, and spell all of it.

8 THE WITNESS: My full name is Anne Price Fortney.

9 Anne is spelled with an E, A N N E. Price, P R I C E.

10 Fortney, F O R T N E Y.

11 THE COURT: Thank you.

12 Counsel.

13 DIRECT EXAMINATION

14 BY MS. SUMNER:

15 Q. Good afternoon, Ms. Fortney.

16 A. Good afternoon.

17 Q. If you could just start off, please, and tell the jurors  
18 what your current position is and responsibilities.

19 A. Yes. I'm a lawyer, and I'm a partner with a law firm  
20 called Hudson Cook.

21 My law firm and I specialize in compliance in the  
22 field of consumer financial services. We help companies comply  
23 with the Fair Credit Reporting Act and similar laws.

24 Q. And how many years have you been involved in practicing in  
25 federal and state consumer protection laws?

Fortney - D

1 A. Well, I got my start with J.C. Penney back in 1976. Oh,  
2 what? That's about 37 years. And at that time, I was in the  
3 Washington office with the Penney Company. And Penney was one  
4 of the largest credit card issuers in America. It was  
5 difficult for consumers to get bank cards at that point.

6 Q. All right. Let's back up just a little bit. And if you  
7 wouldn't mind, walk the jury through your educational  
8 background.

9 A. Sure.

10 I went to Mary Washington College, which was then a  
11 women's college, University of Virginia. I went to Georgetown  
12 University Law Center. And -- and I've been practicing law  
13 since 1969.

14 Q. And have you also participated in other programs, in terms  
15 of training at other universities?

16 A. I was -- went one year to college at -- in  
17 Aix-en-Provence, and I also did some post-graduate work at  
18 Harvard University, when I was with the Federal Trade  
19 Commission.

20 Q. Okay. Let's actually move to some of your other  
21 experiences. Because in your 37 years, I am sure you have not  
22 spent the entire time at the -- this law firm.

23 Could you just walk us through some of your -- and  
24 you don't need to spend a lot of time on this. But I think it  
25 would be helpful for you to walk through the various

Fortney - D

1 positions -- professional positions that you've held.

2 A. Yeah. As I said, I began -- oh, I'd been practicing law  
3 for a few years before I joined the Penney Company. But I had  
4 been more involved with just general consumer protection  
5 issues. But I really began to get into this industry at the  
6 Penney Company. And I was with them until 1982.

7 And then I went to work for the Federal Trade  
8 Commission. And at the Federal Trade Commission, I was the  
9 director of a division that enforces the Fair Credit Reporting  
10 Act and the other privacy laws on behalf of consumers. So I  
11 was basically representing -- I was a federal representative of  
12 consumers at the Federal Trade Commission.

13 I left the Federal Trade Commission in the late '80s  
14 because I got married and my husband was in the Navy, and we  
15 had to move to Hawaii. Tough duty. Somebody had to do it.  
16 And I have been in private practice ever since. I've been with  
17 a couple of law firms. But about ten years ago I joined Hudson  
18 Cook, because I wanted to be able to concentrate my practice in  
19 the area of compliance in this field.

20 THE COURT: Could you slow down a bit, Ms. Fortney,  
21 when you are responding.

22 Go ahead, Counsel.

23 THE WITNESS: Sure.

24 BY MS. SUMNER:

25 Q. So as part of the compliance work that your firm does, has

Fortney - D

1 it done work for any of the three credit reporting agencies?

2 A. Yes. Our firm has about 2,000 clients, because we  
3 represent just about everyone in the consumer financial  
4 services industry. And the way we get to 2,000 clients is we  
5 also represent a lot of auto dealers who are creditors, under  
6 the law.

7 And -- and I -- because I specialize primarily in the  
8 area of the Fair Credit Reporting Act and privacy, I do work  
9 for the major consumer reporting agencies: Experian,  
10 TransUnion, and Equifax, to a certain extent. I have not done  
11 much work for Equifax ever, and I have done no work for Equifax  
12 in the last year or so.

13 But I do respond to questions from primarily banks  
14 and finance companies as they try to comply with the Fair  
15 Credit Reporting Act. But I also do represent some reporting  
16 agencies.

17 THE COURT: Can you slow down a bit.

18 THE WITNESS: I'm sorry. I do talk too fast. I  
19 apologize.

20 THE COURT: It's really important that the jurors --

21 THE WITNESS: I know. I know.

22 THE COURT: -- are able to understand, and that we  
23 have a good record, without interruption.

24 Go ahead, Counsel.

25 BY MS. SUMNER:

Fortney - D

349

1 Q. Thank you.

2 Ms. Fortney, if you can talk a little bit about some  
3 of the publications that you have in this area, and whether you  
4 have published any materials specifically on the Fair Credit  
5 Reporting Act?

6 A. Yes, I have. I have written articles for professional  
7 journals on the Fair Credit Reporting Act. I've also written a  
8 how-to-comply manual for the consumer reporting industry. How  
9 to comply with the Fair Credit Reporting Act.

10 I haven't written much recently, because I devote  
11 most of my time, other than the practice of law, to giving  
12 presentations, at various professional associations, American  
13 Bar Association, the -- and others. And -- because it's  
14 difficult for even lawyers to keep up with all of the changes  
15 in the law in this area.

16 Q. And the materials that you -- or that were published, were  
17 those self-published or published by some other publication?

18 A. They were all published by some other publication.

19 Q. And could you name some of the publications that have  
20 published your work?

21 A. *The Quarterly Report of the Conference on Consumer Finance*  
22 *Law*. The -- I think that's the one that I published in most  
23 often, most recently.

24 *Credit World* was another one. And I'm sure there's  
25 some others. I just don't recall offhand.

Fortney - D

1 Q. Okay. And have you also acted as an expert on FCRA  
2 issues?

3 A. I do, from time to time; it's not a major part of my work.  
4 Again, I spend most of my time dealing with these compliance  
5 issues.

6 I would say probably about -- maybe 10 percent, maybe  
7 15 percent of my time, on average, is involved in writing  
8 expert reports or otherwise serving as an expert witness.

9 Q. Could you tell the jury a little bit about the purposes of  
10 the Fair Credit Reporting Act.

11 A. The Fair Credit Reporting Act is designed to balance the  
12 need of the credit reporting industry for complete and accurate  
13 information on consumers. Balance those needs with the rights  
14 of consumers to the privacy and confidentiality and fair  
15 treatment of that highly sensitive information.

16 Q. And does the FCRA require perfect consumer reports?

17 A. No. And, in fact, Congress has repeatedly said, and the  
18 federal regulatory agencies have said, perfection is impossible  
19 given the volume of -- of consumer reports, given the number of  
20 files that are out there, given the speed at which this  
21 information is disseminated, and also because it's an automated  
22 system. It's also a system that runs pretty much on a  
23 voluntary basis.

24 No law requires a bank or other furnisher to give  
25 information to a consumer reporting agency, and no law requires

Fortney - D

1 a consumer reporting agency to provide a consumer report to a  
2 bank.

3 And so it's basically a voluntary system. It is a  
4 system that has evolved; evolved over the last hundred years or  
5 so. And most significantly in the last 20 or 30 years.

6 Q. So how would you characterize the basic standard that  
7 relates to the Fair Credit Reporting Act?

8 A. Well, as I said, it's a balancing of -- of competing  
9 interests, competing needs.

10 And the standard generally is one of reasonableness.  
11 What is reasonable under the circumstances? And that term  
12 "reasonable" appears repeatedly throughout the Fair Credit  
13 Reporting Act.

14 Consumer reporting agencies are required to have  
15 reasonable procedures to ensure the accuracy of information in  
16 consumer reports. They have reasonable procedures to address  
17 disputes. Everything in the act is based on a standard of  
18 reasonableness.

19 Q. Now, if you can address a little bit the role of credit  
20 reports in our U.S. economy and the -- how that information is  
21 shared between different groups.

22 A. Okay. Again, I'm relying here primarily on -- not just my  
23 expertise but also the findings of Congress in this area and  
24 also the Federal Trade Commission; and a new agency, the  
25 Consumer Financial Protection Bureau, which was created a



Fortney - D

1 couple of years ago to assure the -- the protective rights of  
2 consumers in the field of consumer financial services.

3 And what they all have said, including fairly recent  
4 testimony by the director of the Consumer Financial Protection  
5 Bureau, is -- is that our economy really rests on -- in large  
6 part, on the consumer reporting industry.

7 This is the industry that enables creditors to make  
8 informed decisions about consumers, gives consumers access to  
9 mortgage loans, credit cards, and even auto loans. Now, the  
10 fact that someone can go into an auto dealership and drive away  
11 with a car within minutes or hours, after you finish  
12 negotiating with the dealer, that does not exist in most  
13 countries.

14 The fact that you can get an instant credit card  
15 in -- in a retail department store, that is because of the  
16 consumer reporting system.

17 And there have also been studies showing that on  
18 average, Americas pay two percent less for our mortgage -- our  
19 mortgages than in any other country because of our consumer  
20 reporting industry. It is a -- it is the foundation, as I  
21 said, of the U.S. consumer economy.

22 Q. And is there a certain expectation of the speed of  
23 processing the information at this point in our economy?

24 A. Yes, there is. That's why I mentioned the fact that you  
25 can go into -- actually, you've all been in a department store,

Fortney - D

1 they're offering you 10 percent off, or some other incentive,  
2 if you get their credit card. And you can get it right then  
3 and there. The reason you can get it right then and there is  
4 because there is an instantaneous report from a -- a CRA, a  
5 consumer reporting agency, to the store. So this -- this all  
6 happens with great speed and with remarkable accuracy.

7 Q. Now, you mentioned a few moments ago Congressional  
8 findings. You mentioned the FTC and the CFPB. A mouthful.

9 Are those -- first, if you can explain the role of  
10 the regulators, and then also -- well, I won't pose two  
11 questions. Just start off with explaining the role of the FTC  
12 and CFPB.

13 A. For many years the Federal Trade Commission was the  
14 primary agency regulating the consumer reporting industry.

15 And then when Congress created the Consumer Financial  
16 Protection Bureau, it consolidated a number of the functions of  
17 other regulatory agencies into this new agency. So although  
18 the Federal Trade Commission still has some responsibilities in  
19 this area -- and we'll talk about studies and things like that  
20 the FTC has done -- the principal agency now is the Consumer  
21 Financial Protection Bureau, and they exercise oversight in  
22 this industry. And they also, along with the Federal Trade  
23 Commission, enforce the laws when any of these companies may  
24 violate the law.

25 Q. Through your years in this area of expertise, have you

1 followed Congressional findings, FTC enforcements, and the more  
2 recent CFPB actions with respect to credit reporting agencies?

3 A. Yes, I have. I've been following them ever since 1976,  
4 and when I was with the Federal Trade Commission, and then even  
5 more recently in private practice -- practice, I've testified  
6 before Congress on issues involving credit reporting.

7 Q. Now, and as part of your following the guidance from these  
8 regulators and from Congress, has there been discussion about  
9 whether or not errors are inevitable in this process?

10 A. Yes. As I think -- I think I mentioned that -- there's  
11 actually direct Congressional language saying that -- that  
12 errors are inevitable.

13 Q. Now, you did mention a little bit about the furnishers  
14 of -- of information to the credit reporting agencies.

15 Is there any requirement that they use any specific  
16 form of identification of a consumer when they are reporting  
17 that information?

18 A. No, there is not. And, in fact, that's one of the reason  
19 why furnishers will provide different information and sometimes  
20 incomplete information with respect to the consumers on whom  
21 they are furnishing the information.

22 Q. Does this -- well, what issues does that create for a  
23 credit reporting agency that is receiving information from  
24 furnishers that may not include the same identification items?

25 A. Yeah. I think, first of all, you have to understand the

Fortney - D

355

1 volume. We have -- I think it's 1.3 billion updates of  
2 information from the furnishers to the consumer reporting  
3 agencies each month. Each month. Billions of items of  
4 information are going into the consumer reporting agencies.  
5 And all of this information has been identified by the  
6 furnisher with a consumer in some way.

7 Well, the first issue is consumers often have similar  
8 names, last names. Also, furnishers don't have any standard  
9 way of reporting a first name. Names can be abbreviated, they  
10 can be misspelled. Addresses, consumers move around a lot.  
11 And -- and the agencies, the consumer reporting agencies  
12 actually rely on updates from the furnishers, quite often,  
13 because consumers don't notify -- and they are really required  
14 to notify these consumer reporting agencies of changes in their  
15 address. So they rely on information from the furnishers about  
16 changes in address. The other issue that comes in is people  
17 don't always give or provide accurate information about their  
18 date of birth.

19 The final issue involves a Social Security number.  
20 There's a move on -- I think, on the part of some governments  
21 and some creditors, to truncate Social Security numbers.

22 There's also the error -- in other words, you just  
23 provide the last four -- or last six digits a Social Security  
24 number. There are also errors in the input of Social Security  
25 numbers.

Fortney - D

1           So that creates an issue for the -- the CRAs, the  
2 credit reporting agencies, in trying to match the data that's  
3 coming in, these billions of items of information that are  
4 coming in, trying to match it to the correct consumer.

5 Q.   So in addition to the variety of information that credit  
6 reporting agencies receive from furnishers, do the furnishers  
7 also rely on receiving information from consumers?

8 A.   Yes, because it's the consumers, of course, who provide  
9 the information to the furnishers. It's consumers who complete  
10 the -- the applications for credit and who will often notify  
11 their creditors when they are changing their address.

12 Q.   And in your opinion, do consumers sometimes provide  
13 information that is inaccurate to the furnishers?

14 A.   Consumers could provide inaccurate information or, as  
15 indicated, the furnisher could take it down wrong. You have  
16 telephone applications. That information might be incorrectly  
17 recorded.

18 Q.   So have you been involved in reviewing some of the mixed  
19 file procedures that Equifax has employed to address issues  
20 where information comes in that potentially relates to more  
21 than one consumer?

22 A.   Yes, I have.

23 Q.   And has this been an issue that has been -- that Equifax  
24 has -- has reviewed over time?

25 A.   Yes. In fact, when you look at the procedures -- and

Fortney - D

1 you'll get to them in a minute -- what you see is the -- these  
2 procedures are constantly being reviewed, updated. Every time  
3 there's a modification to procedure, there's a notation of when  
4 it was made and who made it. So I think Equifax is, like the  
5 other CRAs that I know, updating these procedures, trying to  
6 improve the process.

7 Q. Okay. Let me back up for just a minute and ask you a  
8 little bit about the credit reporting industry. Is it your  
9 understanding that these regulators from the FTC, and now from  
10 the CFPB, do they work directly with the credit reporting  
11 agencies?

12 A. Well, they certainly -- I think that they work with the  
13 credit reporting agencies with a lot of interaction. There's  
14 always, in my experience, been interaction with the Federal  
15 Trade Commission. And now there's a lot of interaction with  
16 the representatives of the consumer reporting agency and the  
17 Consumer Financial Protection Bureau. Yes.

18 Q. Let me ask you if you are familiar with some agreement of  
19 assurances and consent de -- decrees involving the FTC in the  
20 early 1990s. Are you familiar with that?

21 A. I am very familiar.

22 Q. Okay.

23 A. And here's why.

24 When I was at the Federal Trade Commission, we had  
25 complaints about accuracy of information at consumer reporting

Fortney - D

1 agencies.

2 We investigated the consumer reporting agencies. We  
3 actually sued TransUnion; entered into an agreement with them.  
4 And we thought that we had addressed the problem.

5 What happened, though, was that problems were not  
6 really addressed, because we were focusing on the information,  
7 once it was in -- within the consumer reporting agency.

8 So these investigations by the Federal Trade  
9 Commission and the states' Attorney General really focused on  
10 the procedures that the agencies had -- or, I'm sorry, with  
11 these companies, these consumer reporting agencies had to  
12 comply with the Fair Credit Reporting Act, including the input  
13 of the data and also resolving consumer disputes.

14 And what the -- the Government found is that there  
15 were in fact deficiencies. And that's why they entered into  
16 settlements with all of the consumer reporting agencies. This  
17 was an industry-wide problem. But this was a problem in the  
18 1990s.

19 And in the early 1990s, credit reporting was the  
20 number one source of complaints at the Federal Trade  
21 Commission. Today, it isn't even on the top ten list.

22 By the way, identity theft is on the top -- is the  
23 number one complaint, not credit reporting.

24 So what happened? Well, two things happened. First  
25 of all, the industry got a wake-up call. They realized there's

1 a problem here. They -- they developed some automated systems,  
2 automated systems for the input of information from -- from  
3 furnishers. This is the Metro 2 (phonetic) format, trying to  
4 create a standardized format in which information could be  
5 automatically provided; these billions of updates each month to  
6 the bureaus.

7 Also they developed the EOSCAR system --

8 THE COURT REPORTER: I'm sorry. I need you to speak  
9 slower, please.

10 THE WITNESS: They also developed the EOSCAR system.

11 BY MS. SUMNER:

12 Q. If you could spell that out for the court reporter.

13 A. EOSCAR is an acronym. It's E-O-S-C-A-R. And it stands  
14 for the electronic online -- I forget. I forget the acronym.

15 But, anyway, it's designed to -- it's -- what it is,  
16 it is the web-based computer software that enables the CRAs to  
17 communicate with furnishers about consumers' disputes, and also  
18 enables the furnishers to relay the results of their  
19 investigations of these disputes back to CRAs.

20 This is a system that was developed because there was  
21 revision in an amendment to the Fair Credit Reporting Act that  
22 essentially required the consumer reporting agencies to have an  
23 automated system. They developed this system. And, again,  
24 when the Federal Trade Commission and the Consumer Financial  
25 Protection Bureau have -- have looked at this system, they



Fortney - D

1 recognized that it does in fact provide for the resolution  
2 of -- of consumer complaints.

3 So we had a change in the industry in the early '90s.  
4 We also had some major improvements to the federal -- to the  
5 Fair -- Fair Credit Reporting Act. And those improvements  
6 really put more of an obligation on the furnishers to provide  
7 accurate information to the bureau -- to the consumer reporting  
8 agencies, and also to investigate the disputes.

9 So we had a major change in the law. We had changes  
10 in technology. And so I think that's the reason, today, that  
11 we don't have the percentage of complaints involving --  
12 involving credit reporting involving consumer reporting  
13 agencies.

14 Q. And if I could just pause you there for a moment. And I  
15 would like for you to actually address this issue of consumer  
16 satisfaction and the changes that have occurred over time,  
17 since the '90s.

18 A. Um-hmm.

19 Q. You mentioned a number of system changes. But if you can  
20 focus on the changes in the consumer satisfaction as well.

21 A. Right. Yes. And because this is an area where the  
22 industry is constantly trying to improve, there are studies  
23 now -- studied by the Federal Trade Commission and a -- a study  
24 by a report by the Consumer Financial Protection Bureau.

25 The Federal Trade Commission reported in, I think it

Fortney - D

361

1 was, 2008 that 90 percent of consumers resolved their  
2 complaints regarding, you know, primarily accuracy and  
3 disputes. But involved -- resolved their complaints with the  
4 consumer reporting agencies before these were referred by the  
5 Federal Trade Commission to -- to the consumer reporting  
6 agencies for their resolution.

7 So -- in other words, the FTC found a 90 percent  
8 resolution basis before anybody else had to get involved.

9 What the Consumer Financial Protection Bureau  
10 reported in December of last year was that 95 percent of  
11 consumers were satisfied with the results of the  
12 reinvestigations.

13 Q. Okay. Let's focus for a minute on issues with respect to  
14 mixed files.

15 Has the FTC provided guidance with respect to that  
16 and the -- sort of the evolution of that issue?

17 A. Yes. Congress directed the Federal Trade Commission to  
18 study this issue. And, in 2004, the FTC published a report of  
19 its investigation of the study.

20 And the first thing that the FTC did was discuss some  
21 of the issues that I've just mentioned before about the  
22 difficulty that consumer reporting agencies have in matching  
23 the data that comes in to them with the correct consumer.

24 And the FTC noted that one of the procedures, which  
25 was engaged in by all three of the CRAs -- they focused on the

Fortney - D

1 three nationwide CRAs. But they said that the procedure  
2 engaged in by all three of the CRAs with respect to the Social  
3 Security number was that if seven or eight of the nine digits  
4 matched, that was -- even though it was considered a partial  
5 match, that was considered a sufficient match to identify the  
6 consumer to the -- to the correct file. They recognized that  
7 was the procedure that was being used.

8 They also, of course, recognized that the -- the CRAs  
9 were -- were attempting to match name, address -- you know --  
10 date of birth, as well as Social Security number.

11 So the issue was -- that -- that -- that the FTC  
12 thought about the issue, was should we require an exact match?  
13 Should we require a nine-for-nine match with -- with the Social  
14 Security number? Should we require more identification with  
15 respect to matching? And the FTC concluded no, we should not  
16 require this.

17 Well, why? The reason is that if you require a more  
18 exact match, you're going to have a lot of file fragments  
19 sitting out there that don't belong to anybody, because you  
20 can't exactly match them to somebody. What that means -- what  
21 the FTC actually said is that would harm consumers.

22 You might have an increase in accuracy, but you have  
23 a decrease in completeness, which would mean you would have  
24 more incomplete files. And the more incomplete files would  
25 mean that fewer consumers would get credit, because creditors

Fortney - D

363

1 would not be able to evaluate all of their information, or they  
2 would get credit on high returns -- higher rates.

3 What the FTC also observed was that 85 percent of the  
4 credit accounts contained positive information.

5 So they -- they -- they looked at this. They did a  
6 thorough study. And they concluded it's not perfect, but we  
7 think, at this point, we are not going to recommend any changes  
8 to this procedure, the procedure that all three of the  
9 nationwide consumer reporting agencies follow.

10 Q. Let me ask you a question about error rates.

11 Did the FTC consider error rates when it was  
12 reviewing the process and particularly with respect to mixed  
13 files?

14 A. They recognized that mixed times are a source of errors.  
15 The FTC also did a study at the direction of Congress. It was  
16 a study that took them about ten years to complete because they  
17 had to develop the methodology. They published the results in  
18 February of this year. The study dealt with the accuracy of  
19 information in consumer reports.

20 And what they found was that 98 percent of consumer  
21 reports contain no errors that would result in a material  
22 change in the consumer's ability to get credit or the rate that  
23 they would pay. So you have a two percent error rate.

24 Now, that's not great, but it's a whole lot better  
25 than it was in the early '90s, and it's getting better all the

Fortney - D

364

1 time.

2           There was also a study done by the Political and  
3 Economic Research Council that was published about a year  
4 before, and it found a 1 percent error rate. And these are --  
5 these are not the types of errors that somebody has an old  
6 address, or something like that. These are the errors that  
7 could result in somebody either not getting credit or getting  
8 credit on higher terms. We are talking about a 1 to 2 percent  
9 error rate.

10           So that means that 98 to 99 percent of consumers are  
11 able to get -- or -- 98 to 99 percent of consumer reports  
12 are -- can be relied on and are relied on because they  
13 completely accurate with respect to the consumers.

14 Q. Ms. Fortney, Mr. Hendricks testified earlier today and  
15 referenced a -- a PIRG study, which I understand that to mean  
16 the Public Interest Research Group. And I believe that the  
17 study that he referenced was in the 1990s.

18           Are you familiar with that study?

19 A. I'm familiar with that study. I'm familiar with even a  
20 later study done in 2004. I'm also aware that the Consumer  
21 Financial Protection Bureau looked at that study and said that  
22 the results were not reliable.

23           Why? Because, first of all, the sample size was 154.  
24 That's much too small to -- to form any conclusions. And,  
25 secondly, the people who participated in -- in the study were

Fortney - D

365

1 employees of PIRG; their family and their friends. So the --  
2 even the Consumer Financial Protection Bureau said there is  
3 likely bias here.

4 And there's -- there's an agency called the GAO,  
5 which is the Government Accounting Office. And what they --  
6 what they do is investigate -- or sort of -- investigate  
7 information, provide information to Congress about various laws  
8 that Congress is interested in.

9 And the GAO looked at these same PIRG studies and  
10 came to the same conclusion as the Consumer Financial  
11 Protection Bureau, which is that these -- that this study -- or  
12 these studies by PIRG -- are not reliable.

13 Q. Mr. Hendricks also referenced generally to media coverage  
14 concerning credit reporting issues and mixed files.

15 Do you also follow media coverage with respect to  
16 this industry?

17 A. I do follow media coverage, and I find a lot of it to be  
18 very inaccurate, to be sensationalist. And here's my own take  
19 on it, which is the idea that, you know, 99, 98 percent of the  
20 time reports are being provided in a way that enables consumers  
21 to get credit. That's not a headline. The headline is this  
22 one person or that one person had difficulty getting inaccurate  
23 information removed from their file.

24 So I think the problem is -- is media stories. And,  
25 again, I don't know exactly which ones to which Mr. Hendricks

1 has referred. But the ones that I have seen, that I question,  
2 are the ones that attempt to sensationalize the -- the problems  
3 that individuals may have, without necessarily having all of  
4 the background, having all of the facts, and also, of course,  
5 not looking at this in terms of how the system works for the  
6 vast, vast majority of consumers.

7 Q. Now, based on your experience as having been in a position  
8 of the Bureau of Consumer Protection at the FTC, is it your  
9 understanding that the FTC would seek enforcement of prior  
10 agreements of assurance or consent decrees if they believed  
11 that the credit reporting agencies were in violation of those?

12 A. Yes. The Federal Trade Commission regularly enforces its  
13 consent decrees, the orders it has against companies. It also  
14 reviews compliance by companies with those orders.

15 And if it had found any problems with these or other  
16 orders, it would have brought enforcement actions.

17 Q. Let me switch gears for a moment. And if I can ask you to  
18 tell us -- or tell the jury what you reviewed in preparation  
19 for your testimony with respect to Ms. Miller's particular  
20 situation.

21 A. Well, I reviewed her complaint. I reviewed her deposition  
22 testimony. I reviewed the deposition testimony of -- of two of  
23 the witnesses for -- for Equifax who were involved in the  
24 process. And I also reviewed the deposition testimony of  
25 Mr. Hendricks. I've reviewed the initial reports that he

1 prepared in this case. And I reviewed the policies and  
2 procedures and training manuals of Equifax.

3 Q. Let's talk a little bit about those policies and procedure  
4 manuals.

5 And if I can ask you to just direct your attention  
6 to -- do you have a notebook of exhibits?

7 A. Yes, I do.

8 Q. Okay. And if I can just ask you to take a moment, and  
9 look at the exhibits that are marked 116 through 134.

10 And just flip the -- through those for a moment,  
11 please. And that way the jurors can do so as well.

12 And after you've had a chance to look at those, let  
13 me know if those policies and procedures were some of those  
14 that you reviewed in preparation for this case.

15 A. (Pause, referring.)

16 Q. Done?

17 A. Done. I looked at them before, so I had an advantage over  
18 the jury.

19 Q. Does this represent all of the policies and procedures and  
20 manuals that Equifax has concerning consumer disputes and mixed  
21 files?

22 A. I don't believe these are all of the manuals.

23 These are some of the ones that I reviewed. I did  
24 review others. And these are included in ones that I reviewed.

25 Q. Are those excerpts from some of the -- and when I say



1 "excerpts," just -- are partial pieces of the manuals, as  
2 opposed to complete manuals, in some circumstances?

3 A. Yes.

4 Q. And are the manuals themselves much more voluminous?

5 A. Yes, they are.

6 Q. And then, as part of your review, did you go through the  
7 policies and procedures manuals and the training manuals?

8 A. Yes, I did.

9 Q. And did you review those manuals with respect to consumer  
10 disputes?

11 A. Yes, I did.

12 Q. Is there a -- a requirement concerning the verification of  
13 a consumer identity?

14 A. Yes. They're very specific provisions of what is  
15 necessary to identify a consumer who is making a dispute.

16 Q. Why is that important?

17 A. Because, as I mentioned before, identity theft is a  
18 problem. And consumer -- the consumer reporting agencies are  
19 concerned about the wrong person inserting information into a  
20 consumer's file. A -- a common tactic of someone who wants to  
21 commit identity theft is to change the address, because now all  
22 of the mail is going to them. They've set up new accounts.  
23 That's all going to them.

24 So it's really important for the CRA that it properly  
25 identify the consumer before beginning a dispute or making any

1 changes to the information in the file.

2 Q. And do some of those policies and procedures also  
3 specifically address mixed file procedures?

4 A. Yes, they do.

5 Q. And do they address the training of agents to prepare them  
6 for various mixed file scenarios?

7 A. Yes, they do.

8 Q. And have you reviewed the specific scenario, with respect  
9 to Ms. Miller?

10 A. Yes, I have.

11 Q. And how would you characterize that, based on your  
12 experience, in terms of what you've seen in the way of mixed  
13 files?

14 A. Well -- I'm sorry. Could you --

15 Q. Sure. That was not a very clear question. I apologize.

16 When you -- how would you describe Ms. Miller's  
17 situation, in terms of what happened in that particular  
18 instance in the mixing of files?

19 A. Well, I think it's undisputed that her file was merged  
20 with that of another consumer, and the evidence also indicates  
21 that Equifax provided her file disclosure, even though she did  
22 not give Equifax the necessary verification of her Social  
23 Security number.

24 And that was in contravention of the -- the policy  
25 that -- policies that Equifax had and that I believe every

Fortney - D

1 consumer reporting agency has. That they must identify the --  
2 verify the identity of the consumer before they provide the --  
3 the report to the consumer.

4 Q. And as a result of that, did that trigger next steps with  
5 respect to her file that was unusual under the circumstances?

6 A. Well, I think the first thing is, this was a very, very  
7 unusual situation, to have this close a match. I had never  
8 seen it before.

9 You know, we have such a close -- we have the same  
10 name, including the same middle initial. And then, of course,  
11 a Social Security number, that was so close.

12 So after she had received her file and saw the  
13 information she identified as not being hers, she then disputed  
14 this to -- to Equifax.

15 The problem was that they didn't know that she had  
16 been able to receive her file with incomplete verification of  
17 her Social Security number.

18 So I think that was one of the problems in the  
19 process as Equifax was attempting to resolve her dispute.

20 Q. And does that circumstance create a confusing scenario for  
21 purposes of -- of communication from the consumer to the  
22 agents?

23 A. Again I'm not quite sure I understand that.

24 Q. I'll withdraw it. Let me try a different approach here.

25 Based on your review and analysis of Equifax's

Fortney - D

1 policies and procedures and the circumstances of this case,  
2 could you give us your expert opinion as to whether, those  
3 procedures were reasonable?

4 A. Well, I think the jury, when they have a chance to review  
5 these policies and procedures, will -- will see how -- how  
6 thorough they are.

7 The thing that struck me also about these policies  
8 and procedures was how they are periodically updated. That is  
9 one of the elements, in my experience, of reasonable  
10 procedures.

11 That the company is not just satisfied with the way  
12 things were, you know, 20 years ago, but they are continuing to  
13 look at these policies and procedures as -- as new developments  
14 occur.

15 So in my experience, and based on my expertise, I  
16 would say these policies and procedures that Equifax has for  
17 dealing with consumer disputes, including those that involve  
18 mixed files, are reasonable, are consistent with the industry  
19 standards.

20 Q. And do you have an opinion as to whether Equifax, over the  
21 years -- since the early 1990s, when those agreement of  
22 assurances and any consent orders were entered -- as to whether  
23 Equifax has changed and updated its policies and procedures  
24 over that time?

25 A. Yes. And, again, I think the -- the dates on the policies

Fortney - D

1 and procedures reflect that.

2 Q. And with respect to the Social Security number match of  
3 seven to nine, do you think by applying that, Equifax  
4 disregarded Mrs. Miller's Social Security number?

5 A. No. I think Equifax followed the procedure that is the  
6 standard in the consumer reporting agency and the procedure  
7 that the Federal Trade Commission studied and concluded does  
8 not have to be changed.

9 Q. You talked a little bit about some of the statistics  
10 involved in this industry, which range in the millions and  
11 millions.

12 Could you also help the jury understand how many  
13 times a name can arise in -- like a last name, like a common  
14 name. You know, such as Johnson, or a name like that. How  
15 many times that --

16 A. The Consumer Financial Protection Bureau, in the study I  
17 mentioned before, dating from December of last year, noted that  
18 in -- in America, there are 1.8 million consumers with the last  
19 name Johnson. And another million consumers with the last name  
20 Davis. And there are many other common last names. And,  
21 again, that is one of the problems that consumer reporting  
22 agencies have to face when they are trying to match the data to  
23 the correct consumer.

24 Q. Earlier, Mr. Hendricks also testified about how closed  
25 this industry is, and that consumers don't have access to this

1 type of information.

2 Could you explain to jury what your understanding is,  
3 in terms of -- of the status of this industry today?

4 A. I think this is a very transparent industry, and that's  
5 not just my conclusion.

6 The Consumer Financial Protection Bureau, in their  
7 study, found that 44 million consumers get their free credit  
8 report each year. 44 million.

9 And I also know that each time a consumer gets their  
10 free credit report, or any consumer report from a credit  
11 bureau, they get a statement of their rights under the Fair  
12 Credit Reporting Act. So they are informed as to how they can  
13 protect themselves, protect their rights, exercise their rights  
14 with respect to their own credit information.

15 In addition, each time a consumer applies for credit  
16 these days, many creditors, in order to comply with what's  
17 called the Dodd-Frank credit score structure, and was to comply  
18 with a new law -- each time a consumer applies for credit, the  
19 creditor gives them a -- a copy of their credit score and an  
20 explanation of how credit score -- scoring works and what goes  
21 into their particular credit score. What are the four major  
22 factors that influence their credit score.

23 So as a result, as consumers today apply for credit  
24 cards or auto loans or mortgage loans, they are getting their  
25 free credit score disclosure. So, as a result, I believe

Fortney - D

1 millions of consumers are getting their credit scores on a  
2 regular basis.

3 And I think what's also significant is the Consumer  
4 Federation of America. Now, that's an organization that  
5 represents consumers. It does not represent anybody in the  
6 industry.

7 The Consumer Federation of America published a study  
8 last year, and found that the vast majority of Americans today  
9 have a very good understanding of their credit reports and  
10 their credit scores, and particularly their credit scores.

11 They found that depending on the question they asked,  
12 80 to 90 percent of consumers understood how credit scores are  
13 used, who provides them, what goes into a credit score, how  
14 consumers behave in paying their bills affects your credit  
15 scores. And they also -- a very high percentage -- understood  
16 the importance of seeing their credit report each year and  
17 checking for the accuracy of that information. This is a very  
18 transparent industry.

19 And I have to say 20 years ago, or in the early '90s,  
20 it was not. Consumers could not get their credit score at all.  
21 They couldn't buy it. They couldn't get it. And they were not  
22 entitled to a free credit report unless they were declined for  
23 credit. So the world has changed dramatically in the last 20  
24 years, and for the better.

25 Q. And as the world has changed dramatically in the last 20

1 years, has Equifax changed its policies and procedures to  
2 address that?

3 A. Absolutely. Absolutely.

4 Q. Let's go back to the specific situation that occurred  
5 here, from your review. Is it your -- your review of the  
6 materials relating to Ms. Miller.

7 Is it your understanding that a -- a single Equifax  
8 agent handled her disputes, or whether there were multiple  
9 agents involved?

10 A. It appeared to me that there were multiple agents  
11 involved.

12 Q. And based upon your review of the information that they  
13 were receiving at the time of her disputes, what -- what --  
14 what information did the Equifax employees have concerning  
15 that -- that credit report that would have indicated to them  
16 whether or not they were dealing with the right consumer?

17 A. Well, again, from the -- when -- when you are looking at  
18 the reasonableness of a CRA's procedures and the following of  
19 those procedures, you have to put yourself in the place of what  
20 did these people know at this time. Not what did they know  
21 today or what do we know today. This is actually the standard.  
22 The test is, what did they know? What did they reasonably know  
23 at the time?

24 And it appears to me that they reasonably knew or  
25 believed that they did not have the proper identification from



Fortney - D

376

1 Ms. Miller when she continued to dispute the information. And  
2 that was because she had gotten the report initially from --  
3 her free credit report without identifying her Social Security  
4 number.

5 But see, the agents looking at that -- you know,  
6 after she got that report, they didn't know that. What they  
7 knew was they had one file on Ms. Julie Miller, with certain  
8 identifying information. And what she was providing wasn't  
9 matching.

10 Q. So could you distinguish for a moment the difference  
11 between a mixed file and a merged file.

12 A. Well, a merged file is a type of mixed file.

13 In this -- a mixed file can occur when just some  
14 information that, for instance, should go to -- let's assume  
15 that a father and son have the same name, senior and junior.  
16 But creditors don't always put in, you know, senior and junior.  
17 So you could have a mixed file. Then you have a file for the  
18 senior and a file for the junior. Some goes to the senior  
19 file, some to the junior file.

20 That is probably the most common type of mixed file.  
21 And mixed files, by the way, are not that common. They're  
22 about 1 to 2 percent of the number of files at consumer  
23 reporting agencies. And that goes back to the FTC study that I  
24 mentioned before about mixed files. So you have a very small  
25 percentage of files that are mixed files.

Fortney - D

1           In this case, you didn't have a mixed file. We had  
2           some information for one Julie Miller and one information for  
3           another Julie Miller. You had this information merged  
4           together. That makes it extremely difficult to determine what  
5           information really should pertain to this Julie Miller.

6           Q. Now, in this case, if -- would it have been more work for  
7           the agents to have reinvestigated and sent out requests for  
8           information to the furnisher, as opposed to what they were  
9           doing in response to her communication?

10          A. Well, the procedures are that no investigation should  
11          begin until Equifax has the proper identification from the  
12          consumer. So until they receive that identification, they  
13          should not have begun any -- any investigation. This goes back  
14          to the concern about fraud, identity theft, corruption of data  
15          in -- in the files.

16                 So what they did was keep asking her for verification  
17          of her identifying information. That required the agent to go  
18          and determine which letter to send. And that's a hard decision  
19          sometimes when you have a situation like this, which is very  
20          unusual.

21                 So they had to go out and figure out which letter to  
22          send. They had to generate that letter. That letter then had  
23          to be mailed out. The agents are sitting there were their  
24          computer terminals, they have access to the EOSCAR system. All  
25          they have to do is enter into the EOSCAR system, the consumer's

Fortney - D

1 dispute, and it goes automatically to the furnisher. That  
2 would have been a much more simple procedure.

3 Q. Let's talk a minute about information that's coming in  
4 from a consumer.

5 Do you agree that Equifax should always just believe  
6 the consumer when they contact Equifax and dispute information?

7 A. I think that would be a disaster to the consumer reporting  
8 industry, and let me explain why.

9 Not just the fact that we have the problem of  
10 identity theft -- and, again, that is a big problem -- but also  
11 we have the problem of credit repair organizations.

12 Now, I don't know if you're familiar with credit  
13 repair companies. These are the ones who promise, falsely and  
14 illegally, that they can remove accurate but negative  
15 information from consumers' reports and their files.

16 The way they do this is they abuse the process, which  
17 is very important for consumers when used properly. They abuse  
18 the process to dispute the information. They -- they -- they  
19 file the same disputes over and over and over again, hoping  
20 that at some point either the CRA will get tired of hearing  
21 from them. Or, alternatively, that the furnisher will get  
22 tired of verifying the information, or will not verify the  
23 information within the appropriate time.

24 Well, the system works in favor of the industry. It  
25 doesn't work in favor of the consumer. These consumers pay a

Fortney - D

1 lot of money to these companies that make these illegal  
2 promises. They violate the law. But here's the problem. They  
3 are -- these companies, these credit repair organizations are  
4 preying on consumers who are desperate. They want to get this  
5 bad information out of their file. So they are successful in  
6 getting consumers to sign up.

7 As a result, 30 percent of all disputes received by  
8 Equifax and the other CRAs come from customers of credit repair  
9 clinics. That's a very large percent. It ties up a lot of  
10 resources. They have to investigate every single dispute.

11 So if you -- if they just took the word of a  
12 consumer, Not mine, or This isn't my information, or I want you  
13 to change this information, you would have -- it would be an  
14 invitation to identity theft and other fraud, and also would  
15 enable credit repair organizations to basically corrupt the  
16 information on which everyone relies in providing credit to  
17 consumers.

18 Q. Now, earlier, in Mr. Hendricks' testimony, he proffered an  
19 alternative procedure to address the mixed file situation. And  
20 I believe -- if I'm quoting this correctly -- he referred to an  
21 automated program that he would suggest to review and detect  
22 mixed files.

23 Are you familiar with what he is talking about?

24 A. I've never heard of such a thing, and I am involved in a  
25 lot of issues in this area. And I've never heard of such a

Fortney - D

380

1 thing. I don't know what he has in mind.

2 What I do know is that the Federal Trade Commission  
3 and Consumer Financial Protection Bureau would not require such  
4 a thing unless it were fully developed, vetted, and determined  
5 to meet the cost-benefit analysis that would be required before  
6 a CRA should implement such a program.

7 So without any more information, I really can't  
8 comment on it, other than to say I've never heard of it. And I  
9 can't imagine why the FTC or the CFPB would think it's a good  
10 idea.

11 Q. You mentioned a cost-benefit analysis. Is that a term  
12 that the regulators use in analyzing potential programs or --  
13 or procedures for the credit reporting agencies?

14 A. Yes, it is.

15 And that is the analysis that the Federal Trade  
16 Commission applied when studying the problem of mixed files,  
17 and determining whether it was appropriate to require more  
18 precise matching.

19 They said that they -- based on their study, they did  
20 not believe that they could conclude that the cost -- in other  
21 words, the harm to consumers of having incomplete files --  
22 would offset the -- or be offset by the benefits to consumers  
23 of having completely accurate information.

24 They did a cost-benefit analysis and said, Based on  
25 that analysis, we do not believe that we should recommend

Fortney - D

1 changes to the current system.

2 Q. Based on your experience and expertise in this industry  
3 and your review of this case, do you believe what happened to  
4 Ms. Miller was foreseeable to Equifax?

5 A. Well, even though mixed files occur only about one to two  
6 percent of the time, it was foreseeable that there would be a  
7 mixed file. That's why Equifax has these procedures. This is  
8 a foreseeable event.

9 What was not foreseeable was that -- an Equifax agent  
10 would provide a consumer report to a consumer who had a  
11 different Social Security number than what was on file, without  
12 requiring a -- a verification of that Social Security number.  
13 That's what was not foreseeable. And I think that was the --  
14 the thing that Equifax, despite all of these good procedures,  
15 could not have foreseen.

16 Q. And in your expert opinion, with respect to the  
17 information that you've reviewed in this case, were Equifax's  
18 actions that of a reasonably prudent credit reporting agency?

19 A. Yes, they were.

20 Q. And in your expert opinion and in your review of this  
21 case, did Equifax act with reckless disregard as to Ms. Miller?

22 A. Not at all.

23 MS. SUMNER: May I have a moment, your Honor?

24 THE COURT: Yes, of course.

25 MS. SUMNER: Thank you, your Honor.

Fortney - X

1 THE COURT: No further questions?

2 MS. SUMNER: No further questions.

3 THE COURT: Cross.

4 MR. JUSTIN BAXTER: Thank you, Judge.

5 CROSS-EXAMINATION

6 BY MR. JUSTIN BAXTER:

7 Q. Good afternoon, Ms. Fortney?

8 A. Good afternoon.

9 Q. My name is Justin Baxter. We've never been introduced.  
10 I'm one of the attorneys who represents Ms. Miller.

11 A. Um-hmm.

12 Q. Earlier in your testimony, you said that consumer  
13 reporting agencies are required to have reasonable procedures  
14 to ensure maximum possible accuracy. Is that correct?

15 A. That's correct.

16 Q. But that's not the legal standard under the Fair Credit  
17 Reporting Act. Correct?

18 A. Yes, it is.

19 Q. Well, let me read to you Section e of the statute.

20 A. Yeah.

21 Q. Whenever a consumer reporting agency prepares a  
22 consumer --

23 MS. SUMNER: Your Honor, I would ask counsel to  
24 provide Ms. Fortney with a copy of the --

25 THE COURT: Well, if she needs it, she'll ask for it.

Fortney - X

1 But given what she's described, she can probably read it to  
2 counsel.

3 So let's everybody get on the same page. And if you  
4 need the help, go ahead and ask for it.

5 Go ahead.

6 BY MR. JUSTIN BAXTER:

7 Q. Whenever a consumer reporting agency prepares a  
8 consumer report, it shall follow reasonable  
9 procedures to assure maximum possible accuracy of  
10 the information concerning the individual about  
11 whom the report relates.

12 A. Yeah. That's a -- I shortened that. That is the  
13 standard. The standard is to have reasonable procedures to  
14 assure maximum possible accuracy. Where the Fair Credit  
15 Reporting Act actually imposes that obligation is when that  
16 report is actually provided by the CRA. That's why you have  
17 that language.

18 Q. And you would agree that the Fair Credit Reporting Act  
19 requires consumer reporting agency not just to have procedures  
20 but to follow procedures?

21 A. Yes.

22 Q. Okay. And so that's the correct standard?

23 A. Yes.

24 Q. All right. You mentioned that there's an approximate 1 to  
25 2 percent error rate for mixed files. Is that correct?



Fortney - X

384

1 A. That's correct.

2 Q. So --

3 A. That's what the Federal Trade Commission reported.

4 Q. And so for 200 million adults in America with credit  
5 files, approximately 2 to 4 million Americans with mixed files?

6 A. That's correct.

7 Q. All right. As we discussed a moment ago, the standard  
8 under the Fair Credit Reporting Act is that the agency must  
9 follow reasonable procedures to assure maximum possible  
10 accuracy. Correct?

11 A. Correct.

12 Q. Now, in this case, Equifax merged Ms. Miller's credit file  
13 with a different person, with a different Social Security  
14 number, with a different date of birth, and a different  
15 address. Correct?

16 A. Correct.

17 Q. And that's not reasonable, is it?

18 A. That's not the standard.

19 The standard is they follow reasonable procedures to  
20 assure the accuracy, not that the report be accurate. That  
21 would be strict liability. They follow the reasonable  
22 procedures to assure the accuracy of the information. The  
23 focus is on the reasonableness of the procedures.

24 Q. Okay. But my question is, was it reasonable to mix  
25 Ms. Miller's credit file with a different person, with a

Fortney - X

1 different social, a different date of birth, and a different  
2 address?

3 A. What I'm saying is given the report that the Federal Trade  
4 Commission did on this -- on this issue of mixed files, that  
5 Equifax followed the industry standards, which the FTC declined  
6 to change.

7 Q. All right. I guess we're talking past each other.

8 I'm just asking --

9 A. No, I'm trying to answer your question. I'm just --

10 Q. All right. I'm just looking for a yes-or-no answer.

11 Was it reasonable to mix Ms. Miller's file with a  
12 different person, with a different social, a different date of  
13 birth, and a different address?

14 A. Under the circumstances, yes.

15 Q. All right. Now, each and every time a consumer disputes  
16 information in their credit report, the agency is required to  
17 conduct a reasonable reinvestigation within 30 days. Correct?

18 A. Once the agency -- consumer reporting agency identifies  
19 the consumer, yes.

20 Q. Okay. And it's not just that they have to do a  
21 reinvestigation. The -- the statute actually defines what they  
22 have to do. Correct?

23 A. It's set forth -- sets forth the parameters, yes.

24 Q. Okay. And that includes the agency has to review and  
25 consider all of the relevant information provided by the

Fortney - X

386

1 consumer?

2 A. That's once the agency -- once the consumer reporting  
3 agency begins the investigation, yes.

4 Q. Okay. The agency must also notify the furnisher of the  
5 disputed information?

6 A. Once it begins the investigation, yes.

7 Q. Okay. The agency also has to provide all relevant  
8 information that it receives from the consumer to the  
9 furnisher?

10 A. Yes. Yes.

11 Q. The agency also has to delete any information that it  
12 finds to be inaccurate or incomplete or cannot verify?

13 A. That's correct.

14 Q. Okay. And the agency also has to provide written notice  
15 to the consumer of the results of their reinvestigation?

16 A. Yes. Once they complete the reinvestigation, yes.

17 Q. Okay. And all of that has to take place within 30 days?

18 A. That is correct.

19 Q. And if the agency doesn't take each of those steps, that's  
20 a failure to comply with the Fair Credit Reporting Act?

21 A. No, it is not. Because the first step, which I mentioned,  
22 is that the agency must obtain the proper identification of the  
23 consumer before beginning the investigation.

24 Q. Okay. So in this case, Ms. Miller disputed the  
25 completeness and accuracy of information in her credit file.

Fortney - X

387

1 Correct?

2 A. That's correct.

3 Q. And Equifax received that dispute. Correct?

4 A. They received a dispute. They did not know from whom that  
5 dispute came, because they did not have the information they  
6 needed to verify the identity of Ms. Miller.

7 Q. Okay. Would you take a look at your book. Okay?

8 A. Um-hmm.

9 Q. If you'll turn to Exhibit (pause) 25.

10 A. Okay.

11 Q. I'm sorry. Exhibit 26, please.

12 A. Okay.

13 Q. This has been identified as a dispute package that  
14 Ms. Miller sent to Equifax.

15 Okay. If you'll take a look at the first page. It's  
16 marked Exhibit 26, page 1 of 8.

17 A. (Pause, referring.) Yes.

18 Q. Okay. Do you see the final sentence in the first  
19 full-body paragraph is:

20 I've exposed my identity by mailing requested  
21 information several times.

22 And she writes: And twice now, I've received  
23 someone else's credit report, with the wrong  
24 Social Security number and birth date.

25 A. That's what it says.

Fortney - X

388

1 Q. Okay. That would adequately advise Equifax of -- of an  
2 issue with the credit file. Correct?

3 A. It -- well, the letter speaks for itself. It basically  
4 tells what her concern is here.

5 Q. Okay. If you'll turn to the second page.

6 A. Um-hmm.

7 Q. This is Equifax's research request form. Correct?

8 A. Right.

9 Q. And this is a document that comes with a credit file.  
10 Correct?

11 A. Correct.

12 Q. And Ms. Miller could only obtain this if she had provided  
13 enough information and documentation to obtain a credit file.  
14 Is that correct?

15 A. I don't know what Equifax agents look at when they  
16 provided the information of the credit file to her.

17 What I do know, because it's in the record, is that  
18 she did not provide the verification of the Social Security  
19 number when she initially received her report.

20 Q. Okay. Well, let's keep looking at this letter, because I  
21 think we'll get there.

22 A. Okay.

23 Q. So also on page 2, you see, she circles the Social  
24 Security number and date of birth.

25 A. Correct.

Fortney - X

389

1 Q. And she writes "incorrect."

2 A. Correct.

3 Q. So --

4 A. She writes "incorrect."

5 Q. Right. That would put Equifax on notice that there's an  
6 issue with this credit file with the Social Security number and  
7 the date of birth?

8 A. Yes.

9 Q. Okay. Now, if you will flip with me a couple of pages --

10 A. Um-hmm.

11 Q. -- to page 6.

12 A. Okay.

13 Q. Exhibit 26, page 6.

14 A. Um-hmm.

15 Q. This is a copy of Ms. Miller's complete W-2 form.

16 Correct?

17 A. Um-hmm. Correct.

18 Q. And it has her full, unredacted Social Security number?

19 A. Um-hmm.

20 Q. And it has her address?

21 A. Yes.

22 Q. Okay. Would you turn to the next page.

23 A. Um-hmm.

24 Q. It's Exhibit 26, page 7?

25 A. Um-hmm.

Fortney - X

390

1 Q. This is an insurance bill.

2 A. Um-hmm.

3 Q. And it shows Ms. Miller's complete, correct address?

4 A. Right.

5 Q. Okay. This is enough information for Equifax to verify  
6 Ms. Miller's identity? Do you agree?

7 A. I really don't know, because, again, I would have to know  
8 everything else that was there at the time. I really don't  
9 know.

10 Q. Okay. During your testimony, you said that the standard  
11 is what's reasonable based on what they knew at the time.

12 A. Right. Um-hmm.

13 Q. Correct?

14 Here we have a complete document the -- the --  
15 Ms. Miller sent to Equifax and they received.

16 A. Right.

17 Q. And she says, I'm receiving the credit file for another  
18 person.

19 A. Um-hmm.

20 Q. And then she provides the confirmation number that  
21 corresponds to that person. And then she provides her W-2 and  
22 her insurance bill.

23 What more could she provide?

24 A. Well, again, I don't -- I would have to look at everything  
25 that was available. That's outside the scope of what I've

Fortney - X

1 testified to.

2           What I'm saying is we're looking at this from her  
3 perspective, and that's a very important perspective. This is  
4 what she provided.

5           The other thing -- and I think there are some  
6 unknowns here -- is what did the agents have in front of them?  
7 What did they know? What did they look at? We have some  
8 information. But, again, this is not something I spent a lot  
9 of time on because I'm only talking about the -- the issues as  
10 an expert here.

11           I bet the jury could certainly look at the evidence.  
12 But what I think we have to do is say that this was an unusual  
13 situation from the perspective of the agents. That's not  
14 Ms. Miller's' perspective. And I appreciate her perspective.  
15 But there are two perspectives here, and I don't know what  
16 other information the agents had, and why they did not respond  
17 in the way Ms. Miller wanted.

18 Q.   Okay. But this is the document. We actually have a real  
19 document --

20 A.   Yes.

21 Q.   -- that she sent.

22 A.   But -- but we also need to know that, you know, what they  
23 had on file, was -- was other information. We know that.

24 Q.   Okay. What I'm asking is based upon this documentation  
25 that we have before us --



Fortney - X

392

1 A. Right.

2 Q. -- was this enough to initiate a reinvestigation?

3 A. I -- I think that what we have here is her identifying  
4 information, the nature of her dispute.

5 So I think if we're just looking at this and not  
6 anything else, I would say yes. But I don't know what else was  
7 going on.

8 Q. Okay. So your answer to my question is yes?

9 A. That's correct.

10 Q. They should have started a reinvestigation?

11 A. Yes.

12 Q. And if they didn't, that would be a failure to comply with  
13 the Fair Credit Reporting Act?

14 A. I wouldn't go that far. Again, it could be, and -- it  
15 could be a failure. It could also be that they misunderstood  
16 what was there. We don't know that.

17 What we do know is Ms. Miller submitted this dispute,  
18 and it was not resolved to her satisfaction. That's what we  
19 know.

20 Q. Okay. Earlier in your testimony you said that the agency  
21 must follow reasonable procedures. Correct?

22 A. Um-hmm. Correct.

23 Q. In your review of this case file, did you see evidence  
24 that Equifax failed to follow its own procedures?

25 A. What I saw, yes, was that Equifax did not always follow

Fortney - X

1 its own procedures; including when it initially provided that  
2 first consumer report to Ms. Miller.

3 Q. In fact Equifax sent four different credit reports to  
4 Ms. Miller. Correct?

5 A. Correct.

6 Q. And each of those credit reports had the full Social  
7 Security number of the other person. Correct?

8 A. That's what -- because that's what Equifax had on file.

9 Q. And the date of birth?

10 A. That's what they had on file.

11 Q. And that other person's accounts?

12 A. That's what -- that's what they had on file. They thought  
13 they were providing the complete file to Ms. Miller.

14 Q. Okay. But it was also your testimony that under their  
15 procedures they weren't supposed to send any of those credit  
16 files to Ms. Miller. Correct?

17 A. That's correct.

18 Q. Okay. So those four times, Equifax ignored its own  
19 procedures?

20 A. I didn't say they ignored their own procedures. I don't  
21 know why they provided a report to Ms. Miller when she did not  
22 provide, from the perspective of the agent, the necessary  
23 identifying information and verification of that identifying  
24 information.

25 Q. Okay. Okay.

Fortney - X

394

1 A. Are we saying the same thing?

2 Q. Did you happen to review -- you said you read some  
3 deposition testimony in this case. Correct?

4 A. Correct.

5 Q. You read the deposition of Ms. Mixon.

6 A. I think so, yes.

7 Q. And she talked about some of the reinvestigations, or --  
8 or some of the disputes. Correct?

9 A. Correct.

10 Q. And in fact she said that on some occasions, Equifax was  
11 supposed to process reinvestigations, but the agents didn't do  
12 that?

13 A. That's what I think her testimony is, yes.

14 Q. And she said that when they didn't do that, that was also  
15 outside of procedure. Correct?

16 A. I don't recall exactly what she said. What I do recall is  
17 that she said -- and I don't think there's an issue here --  
18 that Equifax agents did not always follow the procedures.

19 Q. Okay. So -- so there were instances with regard to  
20 investigations where Equifax didn't follow its procedures.  
21 Correct?

22 A. The -- the -- the record reflects the fact that Equifax  
23 did not respond to Ms. Miller's disputes and did not always  
24 follow its procedures.

25 This -- you know, you really don't need an expert to

Fortney - X

395

1 tell you that.

2 MR. JUSTIN BAXTER: Judge, those are the questions I  
3 have of this witness.

4 THE COURT: Thank you.

5 Redirect.

6 MS. SUMNER: Your Honor, we have no redirect.

7 Thank you.

8 THE COURT: All right. Thank you. You are free to  
9 go, Ms. Fortney.

10 THE WITNESS: Thank you.

11 THE COURT: Next witness, please.

12 This will be Ms. Mixon, yes?

13 MR. PERLING: Yes, your Honor.

14 MS. SUMNER: Your Honor, just for scheduling purposes  
15 may I ask when you plan to do an afternoon break?

16 THE COURT: In about a half hour, 3:00, 3:15.

17 Do you need a break now?

18 Jurors, would you like a break now?

19 Okay. We'll have a break.

20 How about 15 minutes, and then we'll take Ms. Mixon  
21 up after the 15-minute recess.

22 So same instruction as before. Don't talk about the  
23 case. Not yet. Talk about anything else you want.

24 And, in fact, I bet Ms. Boyer would be willing to  
25 take you up to the 16th floor balcony for a little fresh air

1 on --

2 THE JUROR: A field trip, right?

3 THE COURT: A field trip up the elevators. Okay. 15  
4 minutes, though. Not a long trip. Come back.

5 THE JURORS: It's her fault if we're not.

6 THE COURT: Please follow Ms. Boyer.

7 All right.

8 (Jurors exit.)

9 THE COURT: Okay. We'll take a 15-minute recess, but  
10 before we do, let me just update.

11 I went back to the **Ashby** case and was reminded that  
12 was not a punitive damage case, though. But that was a case  
13 where we were looking for whether the plaintiff had a basis to  
14 establish actual damage -- or statutory damages of 100 per  
15 person in a class.

16 The issue there, however, did involve willfulness and  
17 the definition of willfulness. And the instructions we're  
18 working with here are exactly consistent with the definition of  
19 reckless disregard. There wasn't any commentary on punitive  
20 damages.

21 I went to Judge Mosman's instruction in **Kirkpatrick**.  
22 He deleted -- of the three categories malicious, oppressive, or  
23 reckless disregard, he deleted oppressive.

24 You may remember this or not. Didn't you try the  
25 **Kirkpatrick** case?

Fortney - X

1 MR. MICHAEL BAXTER: Yes. Yes, we did.

2 THE COURT: So oppressive was not in the list but  
3 malicious was. So I'm just letting you know that's there. I  
4 haven't found any other guidance on the question.

5 So I told you I would look, and I did.

6 MR. EDELSON: Thank you for looking.

7 THE COURT: 15 minutes, please.

8 MS. SUMNER: Thank you for breaking, your Honor.  
9 Appreciate that.

10 THE COURT: Okay. Good.

11 (Recess taken.)

12 MR. EDELSON: Your Honor, this is Ms. Nixon.

13 THE COURT: Good afternoon.

14 THE WITNESS: Good afternoon.

15 THE COURT: Okay. Are the jurors ready?

16 Bring them in, please.

17 (Jurors enter.)

18 THE COURT: Thank you, everyone. Please be seated.

19 Except you, Ms. Nixon. Would you remain standing.

20 Face the jury there and deputy, and raise your right  
21 hand to be sworn.

22 (Witness sworn.)

23 THE WITNESS: I do.

24 THE CLERK: Please take a seat.

25 THE COURT: Bring yourself as close in as you can to

Mixon - D

398

1 the microphone there.

2 Tell us your full name, and spell all of it, please.

3 THE WITNESS: My name is LaDeamya Ellis Nixon.

4 That's L A capital D E A M Y A. E L L I S, hyphen, M I X O,

5 like X-ray, O N, like Nancy.

6 THE COURT: Thank you.

7 Counsel.

8 MR. PERLING: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MR. PERLING:

11 Q. Good afternoon, Ms. Nixon.

12 A. Good afternoon.

13 Q. You also go by DeeDe. Is that correct?

14 A. That's correct.

15 Q. Is this the first time you've testified in court,

16 Ms. Nixon?

17 A. Yes.

18 Q. Would you please tell the jury where you live.

19 A. I live in Lake Columbia, Georgia.

20 Q. And where do you work?

21 A. I work for Equifax.

22 Q. How long have you worked for Equifax?

23 A. A little over 20 years.

24 Q. Can you tell the jury a little bit about your background,

25 before you went to work for Equifax?

1 A. Prior to working for Equifax, actually I had just  
2 completed my student teaching internship. I graduated from  
3 college, and then I did student teaching intern. And then I  
4 started working for Equifax as a temporary employee, part time,  
5 while I was completing the -- my student teaching internship.  
6 And then I started with Equifax full time.

7 Q. And where did you get your education?

8 A. Spelman College in Atlanta, Georgia.

9 Q. And did you graduate from Spelman? Excuse me.

10 A. I did. I graduated in 1991.

11 Q. And so you've worked at Equifax ever since?

12 A. Ever since, yes.

13 Q. What's your current position at Equifax?

14 A. I'm a customer service manager.

15 Q. And you didn't start as a customer service manager, I take  
16 it?

17 A. No, I didn't.

18 Q. Would you take us back to your very first position, and  
19 tell the jury what your very first job at Equifax was.

20 A. My first job at Equifax was a disclosure agent.

21 Q. Would you explain to the jury what a disclosure agent  
22 does?

23 A. A disclosure agent is responsible for actually sending out  
24 a copy of the credit file. We refer to that as a disclosure  
25 copy.



1           So when a consumer contacts Equifax to ask for a copy  
2 of their credit file, the disclosure agents will send that copy  
3 to the consumer.

4       Q.   And what was your next job at Equifax?

5       A.   After that, I became a verification agent.

6       Q.   And what does a verification agent do?

7       A.   A verification agent is responsible for inputting a  
8 response that's received from a data furnisher or credit  
9 grantor, which is a company that's recording information on a  
10 consumer's credit file. So if a consumer disputes information  
11 and then we get verification from the data furnishers or the  
12 credit grantors, the verification agents will input that  
13 response into the system that we use to track consumer  
14 disputes, and just consumer correspondence.

15       Q.   Now, the jury might have already heard this term before,  
16 but what do you call that system, where you track those things?

17       A.   It's called ACIS.

18       Q.   And what does ACIS stand for?

19       A.   It stands for Automated Consumer Interview System.

20       Q.   Now, after verification agent, what was your next job at  
21 Equifax?

22       A.   My next job was actually a dispute agent with Equifax.

23       Q.   And what does a dispute agent do?

24       A.   As a dispute agent, I just -- a dispute agent, I was  
25 responsible for actually taking disputes from a consumer.

Mixon - D

1           So when a consumer contacts Equifax to request an  
2           update on their credit file or to state that some information  
3           is not reporting correctly on the credit file, a dispute agent  
4           would handle that type of situation from a consumer.

5           Q.    Do you sometimes refer to that as a front line agent?

6           A.    That would be considered a front line indicator or dispute  
7           agent, yes.

8           Q.    What was your next job at Equifax?

9           A.    After dispute agent, I became a maintenance reviewer.

10          Q.    And what --

11          A.    A maintenance reviewer, that is an agent that is  
12          responsible for reviewing the -- the dispute process. So it's  
13          like the end of the process.

14                After the verification is received, the maintenance  
15          reviewer, maintenance agent will review to make sure that the  
16          update that was requested by the data furnisher has been made  
17          on the consumer's credit file, and the maintenance reviewer  
18          will then send out a revised copy or the revised results to the  
19          consumer, the results of the -- of the reinvestigation.

20          Q.    And what was your next job at Equifax?

21          A.    Let's see. After maintenance, I became a quality agent  
22          for Equifax.

23          Q.    And what is a quality agent?

24          A.    And as a quality agent, I was responsible for actually  
25          quality checks, where we -- we called it service observing,

1 where we basically -- we monitor and we check a sample of the  
2 work that the agents perform.

3 So for all of the different functions, the disclosure  
4 agents, dispute agents, verification, maintenance agents, the  
5 quality agents -- as a quality agent, I was responsible for  
6 checking their work to make sure that they were meeting service  
7 levels, and they were following the policies and procedures as  
8 they should have.

9 Q. And then your next job?

10 A. And then after quality, I became a trainer, and that's  
11 where I trained new-hire agents. And as -- as well as train  
12 existing agents on refresher training and any up-training,  
13 which is if they were trained to perform an additional  
14 function, I was responsible for that as a trainer.

15 Q. Okay. After you were a trainer, what would you do?

16 A. After trainer, I became a supervisor in the customer  
17 service department.

18 Q. And what did you do in that job?

19 A. I supervised a team of dispute agents.

20 Q. And then after you were a supervisor in the dispute  
21 department?

22 A. After that, I was a -- what's called a vendor manager. I  
23 became a manager, and I was a vendor manager.

24 Q. And what did you do as a vendor manager?

25 A. As the vendor manager, I was responsible for overseeing

1 the vendors that processed the work on behalf of Equifax, to  
2 make sure they were processing correctly.

3 Q. Okay. So were each of those prior positions that you just  
4 described related to customer care regarding consumer contacts?

5 A. Yes. All of those were in the consumer -- what we call  
6 consumer services division. So they deal with consumer  
7 contacts. Yes.

8 Q. And was each one a promotion?

9 A. Yes.

10 Q. All right. Those are your past jobs.

11 Would you tell the jury what you do in your current  
12 job as a customer service manager.

13 A. Okay. As a customer service manager, I am now responsible  
14 for the training department. I manage the quality department,  
15 as well.

16 I also manage a department that handles consumer  
17 disputes that we receive from state and local governmental  
18 agencies, as well as the BBB, which is the Better Business  
19 Bureau.

20 I also have a team of agents that will handle  
21 disputes or complaints that we receive from the CFPB, which is  
22 the Consumer Financial Protection Bureau. And they are  
23 basically formerly known as the FTC. So it's a new agency.

24 Q. Did you mention quality? I might have missed that. You  
25 also mentioned the quality/training department?

1 A. Quality/training, um-hmm. Yes.

2 Q. Now, plaintiff's counsel read to the jury much of your  
3 deposition today. Do you recall giving that deposition?

4 A. I do. Yes.

5 Q. Have you reviewed it since then?

6 A. I have, yes.

7 Q. And you agree in the deposition that Equifax included some  
8 information on plaintiff's credit file that did not belong to  
9 her. After reviewing that deposition, is that still true?

10 A. That's true, yes.

11 Q. And plaintiff's counsel read to the jury the portions  
12 where he went through each of the contacts that plaintiff had  
13 with Equifax, and you admitted that Equifax made some mistakes  
14 in handling those contacts.

15 Have you determined where Equifax made those  
16 mistakes?

17 A. Well, yes, I did.

18 As you stated, I reviewed the previous contacts that  
19 we received from the plaintiff. And in reviewing those, a part  
20 of what, you know, my responsibility was, was to try and  
21 determine where we made those errors, and I did see where those  
22 errors were unfortunately made, yes.

23 Q. Okay. We'll come back to that. Before we talk about  
24 that, let's back up and talk about Equifax a little bit  
25 generally.

1                   What is Equifax?

2       A.   Equifax is a -- is one of the three major credit reporting  
3       agencies.

4                   Equifax, a credit reporting agency, is considered a  
5       repository of information; meaning that we store credit history  
6       on consumers.

7       Q.   Okay. And this is pretty obvious. But what does Equifax  
8       do with those credit histories?

9       A.   Basically the information is stored. And when a consumer  
10      applies for credit or a benefit or employment, the companies in  
11      which the consumer is applying for that credit or benefit would  
12      have you -- will come to Equifax and review the consumer's  
13      credit history in order to make the business decision of  
14      whether or not to grant the credit or the benefit that they're  
15      applying for.

16      Q.   Okay. And we've been talking about this a lot during the  
17      trial. That's obviously called a credit report?

18      A.   A credit report, yes.

19      Q.   Okay. So what is the information contained in the  
20      credit -- what are the four areas contained in the credit  
21      report?

22      A.   A credit report contains basically, as you stated, four  
23      areas.

24                   The first section of the credit file or the credit  
25      report is the identification section, which includes name,

1 address, Social Security number, date of birth.

2 The next part of the credit report is the inquiry  
3 section of the credit file, and the inquiry section is a record  
4 or a list of any companies that may have requested or accessed  
5 the consumer's credit file for review.

6 The next section of the credit file would be the --  
7 the public record or -- what we call public record, or other  
8 information. Meaning public records such as a bankruptcy, a  
9 lien, and the collection agency section of the credit file.

10 And the last part would be the trade history section.  
11 And that would be the area of the credit file that shows the  
12 consumer's credit history with any companies that they  
13 currently have a business relationship with.

14 Q. All right. The first section you mentioned was the -- the  
15 ID section, is that often referred to as the header  
16 information?

17 A. That is the header, yes.

18 Q. Okay. How does Equifax obtain the header information?

19 A. Identification information is reported to Equifax in a  
20 number of ways.

21 The consumer may provide us with ID information  
22 and -- and information is on the credit file or updated on the  
23 credit file based upon that.

24 And also the companies that report the information to  
25 the credit file, they report ID information to the credit file.

Mixon - D

1 So that's another way that identification is reported to the  
2 credit file. And probably the most common way that it's  
3 reported to the credit file.

4 Q. You mentioned a -- a trade line section. What's contained  
5 in the trade line section?

6 A. In the trade line section, that would be any companies  
7 that the consumer has any credit with or has had credit with in  
8 the past, such as department stores or loans or mortgage  
9 information. And it's the credit history. And it shows  
10 information such as a balance or payment history on that  
11 consumer.

12 Q. Okay. And where does that information come from, or how  
13 does Equifax obtain that information?

14 A. It comes directly from the source, which would be the  
15 company that's reporting it. The company that owns that  
16 information.

17 Q. Okay. And does Equifax pay those sources for the trade  
18 lines?

19 A. No.

20 Q. And then, finally, you mentioned the inquiry section. Are  
21 all inquiries on a credit file equal to a credit report being  
22 issued?

23 A. No, not necessarily.

24 Q. Okay. Would you explain to the jury what you mean by  
25 that?



1 A. So an inquiry on a consumer's credit file, it could mean  
2 that the -- that the company actually viewed the consumer's  
3 credit file in order to make a business decision.

4 But there may also be inquiries on a consumer's  
5 credit file that are, like, promotional inquiries. And that is  
6 where the only information that was provided would be the  
7 consumer's name and address, and it would be because that  
8 consumer's credit history or that consumer may meet certain  
9 criteria that a specific company may be looking for in order to  
10 offer credit to that consumer.

11 So, in that sense, they -- the company didn't  
12 actually get a copy of the consumer's credit file, but that  
13 inquiry will show to the consumer.

14 Q. Why do banks and other customers of Equifax need  
15 information regarding consumers' credit?

16 A. Well, banks and other companies and entities, they use  
17 credit information in order to -- to make their business  
18 decisions.

19 So that they can determine who, you know, they want  
20 to do business with based upon creditworthiness.

21 Q. Does Equifax make more money on selling a bad credit  
22 report than a good one?

23 A. No.

24 Q. Do you understand what I mean by bad?

25 If there's negative information on there, does

Mixon - D

1 that -- does Equifax charge more to its customers if there's  
2 negative information on a credit file?

3 A. No, that doesn't have any bearing upon the credit file.

4 On -- I mean, as far as what's on the credit file, Equifax  
5 doesn't sell a credit file based upon what's on it, no.

6 Q. Does Equifax want the credit reports that it sells to be  
7 accurate?

8 A. Definitely. That's a part of what we do. We strive to  
9 make sure that the credit files that are stored in our database  
10 are accurate. That's one of the stipulations of the -- the  
11 Federal Trade Commission, that Equifax should provide accurate  
12 information on the credit file. So that's definitely something  
13 that we strive to do.

14 Q. What would happen if Equifax got the reputation in the  
15 marketplace of selling inaccurate credit reports?

16 A. I would think that if that happened, then other companies  
17 wouldn't want to do business with Equifax.

18 You know, that wouldn't be a good look for Equifax to  
19 have that type of reputation.

20 Q. Does Equifax try to follow procedures that are designed to  
21 ensure that the credit reports it sells are accurate?

22 A. I'm sorry. Can you repeat? I'm sorry.

23 Q. Yes.

24 Does Equifax try to follow procedures that are  
25 designed to ensure that the credit reports that it sells are

1 accurate?

2 A. Oh, definitely. Yes.

3 We have procedures in place to try and make sure  
4 those credit files are accurate.

5 Q. So could you give the jury some examples? Like,  
6 initially, when information comes in, of what Equifax does to  
7 make sure that the information is accurate on those credit  
8 files?

9 A. Well, there are different quality controls that are in  
10 place, so that when information is reported to a consumer's  
11 credit file, there's a quality process that's there to try and  
12 ensure that the information is accurate.

13 There is also like a -- a different quality process  
14 or a monitoring process, where there is a department that will  
15 monitor a company's pattern and how they report information.

16 And if there is anything that -- that doesn't look  
17 right or seem right or any red flags, based upon a company  
18 that's reporting information, then there is a process that's in  
19 place where Equifax will -- or may make the decision to no  
20 longer do business with that company because they're not --  
21 their reporting practices are not up to standard.

22 Q. And does Equifax have policies and procedures in place to  
23 assure that it conducts prompt investigations and adequate  
24 investigations of disputes made by consumers?

25 A. Yes, we have written policies and procedures in place to

1 make sure that happens.

2 Q. And you use those policies and -- do -- do you use those  
3 policies and procedures to train your agents who communicate  
4 with consumers?

5 A. Yes.

6 Q. So let me ask you to take a look at Exhibit 116 through  
7 134 in front of you, which are kind of a balance, in the  
8 notebook there, from 116 to the end.

9 Are those excerpts from those training manuals  
10 that -- that you just described?

11 A. Yes. These are excerpts from the policy and procedure  
12 manuals. Yes.

13 Q. All right. So the actual full manual would obviously be  
14 several more pages -- hundreds of more pages? Would that be  
15 fair to say?

16 A. That's definitely fair to say. There is more to it than  
17 this.

18 Q. All right. Who -- who wrote these manuals?

19 A. Actually, some of these policy and procedure manuals were  
20 actually written -- or co-written by me. And there are other  
21 trainers who may assist with writing the policy and procedure  
22 manuals under my direction. So most of them were written by  
23 me.

24 Q. Do you update these?

25 A. Yes. Policy and procedure manuals are updated. Yes.

Mixon - D

412

1 Q. So how often do you issue the manuals?

2 A. The full manuals are reissued to all employees, or all  
3 agents that process on consumer credit files on an annual  
4 basis.

5 Q. And so the exhibits that we have here, 116 to 134, those  
6 aren't the 2013 manuals. These are historic manuals. Is that  
7 fair to say?

8 A. Yes. Based upon the date here, these are not the 2013  
9 manuals.

10 Q. Okay. And so the current manuals might have more  
11 information about -- I'll withdraw that.

12 What does Equifax consider to be a dispute?

13 A. A dispute is when a consumer contacts Equifax to request  
14 information to be updated on their credit file or to state that  
15 there is information on the credit file that they don't agree  
16 with, that they think it's not correct.

17 Q. Okay. And could you give the jury some examples of a  
18 typical dispute that Equifax might see?

19 A. We may receive -- or we do receive disputes from consumers  
20 where they may be requesting identification information to be  
21 updated. For example, there may be someone who's changed their  
22 name, and they want their ID updated.

23 Or we receive disputes from consumers who may be  
24 disputing an account, or something on the credit file, and  
25 they're saying it doesn't belong to them.

1           Or another example would be a balance. A consumer  
2 may dispute a balance on a -- on -- on an account, saying the  
3 balance is not correct, or the balance should be paid in full.  
4 So those are some examples of disputes.

5 Q. Are you familiar with how Equifax handles disputes?

6 A. Yes, I am.

7 Q. How did you gain that familiarity?

8 A. Well, I was a dispute agent myself, yeah.

9 Q. All right. And you've also supervised that department.  
10 Right?

11 A. That's correct.

12 Q. And you've also trained agents that do that?

13 A. Trained the agents on it, supervised it. I still process  
14 disputes, even today. So --

15 Q. So you still personally handle contacts from consumers?

16 A. I do, yes.

17 Q. What are the different ways the consumers can contact  
18 Equifax to dispute something on their credit file?

19 A. Consumers can contact us by phone, by mail, by fax.

20           They can also go online to start a dispute.

21 Q. Can they even come to Equifax and make a dispute?

22 A. There is a -- a walk-in center that's located in Atlanta,  
23 and consumers can come to that center, yes.

24 Q. How many steps are there in -- in the dispute process, in  
25 general?

1 A. It's a three-step process.

2 Q. And what are those three steps?

3 A. The first step would be indication or indicating, as we  
4 call it.

5 The next step would be verification and then  
6 maintenance (indicating).

7 Q. And are these three steps contained in the Equifax  
8 training manuals?

9 A. Yes. There is a training manual that covers the policies  
10 and procedures for each of those individual steps.

11 Q. So, for example -- if you would turn to Exhibit No. 117  
12 for me, please. And if you would take a look at the first five  
13 pages.

14 And, generally, do these describe, in your training  
15 of the indicating staff, the entire dispute process, in  
16 general?

17 A. Yes. This is just -- this is in general a dispute  
18 process, and how the dispute process works overall.

19 Q. Obviously it's not just these five pages that you train  
20 your agents on. It's -- it's more than that. Right?

21 A. Well, no, they're trained on the complete manual.

22 Q. Now, before the three-step process can start, does Equifax  
23 first need to locate a credit file for the consumer that's  
24 contacted it?

25 A. Yes.

Mixon - D

415

1 Q. And what information does Equifax require that the  
2 consumer provide in order to locate the credit file?

3 A. Equifax requests the consumer to provide identification  
4 information, which would be the name, address -- current  
5 address, Social Security number, and date of birth.

6 Q. There are different ways -- well, what happens if -- if  
7 the consumer doesn't provide all of the information that  
8 Equifax requests?

9 A. If we don't receive all of the information or complete  
10 information from the consumer, there is a chance that we may  
11 not be able to locate a credit file for the consumer.

12 Q. Okay. And so depending on -- I think you said that the  
13 piece of ID and information you asked for were name, address,  
14 Social Security number, and date of birth.

15 Depending on what's missing, is there a different  
16 process for each? Do you understand my question?

17 A. Can you repeat it?

18 Q. Let me -- I think this will help.

19 MR. PERLING: Let me -- if I might publish to the  
20 jury, your Honor, a demonstrative.

21 THE COURT: Have you shown it to counsel, just to be  
22 sure we're good with that? Yes?

23 MR. PERLING: Yes, we have. Thank you, your Honor.

24 THE COURT: Go ahead.

25 BY MR. PERLING:



Mixon - D

416

1 Q. So on your screen there in front of you, Ms. Mixon -- is  
2 it there?

3 A. Yes.

4 Q. Does this demonstrative show what happens in the different  
5 scenarios when different piece of ID is missing, when the  
6 consumer first contacts Equifax?

7 A. These are the different scenarios, yes, when a consumer  
8 contacts us for -- with a dispute, yes.

9 Q. Okay. So if a consumer contacts Equifax to make a dispute  
10 and their name is similar but it's not 100 percent -- it's not  
11 exactly the same -- for instance, the last name differs, but  
12 the first name matches -- what does Equifax do in that  
13 scenario?

14 A. If we're able to locate a credit file for the consumer, if  
15 it's -- if the address and Social Security number matches the  
16 consumer's credit file but the name varies slightly, then we  
17 will go ahead and start the reinvestigation process for the  
18 consumer.

19 And the consumer will be sent a standard response or  
20 form letter requesting proof of their ID, so that we can make  
21 whatever update needs to be made to the credit file, to make  
22 sure that ID is correct.

23 Q. Okay. And on this demonstrative, we have put that in  
24 quotes, the need for proof of ID letter. Is that the form  
25 letter that you're referring to?

Mixon - D

417

1 A. Yes.

2 Q. And so that's if the name is -- is slightly different but  
3 you've got the -- a Social Security number and date of birth  
4 that matches exactly what's on the consumer's credit file. Is  
5 that right?

6 A. Yes.

7 Q. What happens if the address is different than -- than what  
8 the consumer -- the address on the file is different from what  
9 the consumer said, but the name, date of birth, and the Social  
10 Security number are exactly the same?

11 A. If the address is different, then Equifax will move  
12 forward and start the reinvestigation process for the consumer.  
13 And this would be another scenario where the letter that says  
14 we need ID information from you to verify your address would be  
15 sent to the consumer, requesting proof of that address, so that  
16 we could release the results of the reinvestigation to the  
17 consumer.

18 Q. Okay. So, again, that would fit in that first category  
19 that we have on the top of the slide there. Right?

20 A. Yes.

21 Q. And then, finally, what if the date of birth differs than  
22 the one -- on the file than what the consumer says? So they  
23 gave you the exact name, exact Social Security number, and  
24 exact address, but it's just the date of birth?

25 A. A different date of birth would also fall into the same

Mixon - D

418

1 category, where the reinvestigation will be started, and we  
2 would request proof of the date of birth, so that it could be  
3 updated on the credit file.

4 Q. Now, what if the Social Security number is different --  
5 the Social Security number that the consumer provides when they  
6 advise Equifax that they're making a dispute is different than  
7 what the agent sees, or the agent tries to pull up in the  
8 computer when the disputes are -- what happens in that  
9 scenario?

10 A. With the Social Security number, if that is different,  
11 then the dispute process would not be started on that credit  
12 file. And the consumer would be sent a -- another -- a  
13 different standard form letter that says that we are unable to  
14 locate a credit file for them in our database with the ID  
15 information they provided. That is the file not found form  
16 letter.

17 Q. And then is that the same letter that would go to the  
18 consumer if the name is completely different? In other words,  
19 first name and last name are not even similar, but you've got a  
20 Social Security number, date of birth, and address that's  
21 actually the same on the file?

22 A. That's correct, yes.

23 Q. What if multiple pieces of ID differ?

24 So you get contact by a consumer, where the name and  
25 address is different, but you have the exact Social on a credit

1 file?

2 A. When there are multiple pieces of ID that differs, we will  
3 send the consumer the file not found letter. And the  
4 reinvestigation would not be started at that point.

5 Q. Now, how do your agents know what to do in each of these  
6 scenarios?

7 A. The scenarios are listed in the policy and procedure  
8 manuals that the agents are trained from.

9 Q. Okay. And so, for example, if you would turn to Exhibit  
10 117 in your notebook there, it's the same exhibit we were just  
11 looking at.

12 A. All right.

13 Q. And if you would turn to the page -- there's -- there's a  
14 number that says, EIS, dash, JMiller, dash, 000614, on the  
15 bottom right-hand corner. And I'll just refer to those as page  
16 614, if -- if that's okay.

17 A. Okay.

18 Q. So if you look at page 614, is 614 and 615 -- are those --  
19 is that an example of where you say your agents will be trained  
20 on these different scenarios?

21 A. Yes.

22 Q. And that's just one example. It's also contained  
23 elsewhere in your manuals?

24 A. Yes.

25 Q. Okay. Why, in those situations -- and I'm referring to

1 the slide that we have up on the screen.

2 Why, in those scenarios, on the bottom half, where  
3 the -- where the Social Security number differs, the name  
4 differs completely -- or I think you also said you get multiple  
5 pieces of ID that differs. Why, in those scenarios, is the  
6 process stopped?

7 A. Well, with those scenarios, basically we stop the  
8 process -- or we don't really start the process is because we  
9 want to ensure that we are accessing and processing on the  
10 correct -- correct consumer's credit file.

11 Q. All right. And you corrected me there. It's not that the  
12 process has even stopped. It's the process hasn't started yet.  
13 Right?

14 A. That's correct.

15 Q. And in that scenario, in that bottom half scenario of this  
16 screen here, you send what's called a file not found letter.

17 What does that say, if you could just summarize that  
18 for the jury?

19 A. The file not found letter basically just tells the  
20 consumer that Equifax is not able to locate a credit file in  
21 the database with the identification information that they have  
22 provided.

23 And it gives the consumer a -- some examples of  
24 documents that they can provide to Equifax in order to assist  
25 with trying to locate the credit file, and -- and making sure

1 the ID information is correct.

2 Q. And what happens at Equifax if a consumer responds, and --  
3 and I think you said that you asked them to provide some proof  
4 of ID.

5 A. Yes.

6 Q. So -- so what happens in the process, if Equifax then gets  
7 that proof of ID from the consumer?

8 A. When the ID is received from the consumer, if we have  
9 received complete identification from the consumer, then we  
10 will attempt to locate the consumer's credit file.

11 So that will be when the process would actually --  
12 it's like it starts over again, where we're attempting to  
13 locate a credit file for the consumer.

14 Q. All right. And at this point, assuming the -- the ID is  
15 different than what was on the credit file, will Equifax update  
16 that ID to match what the consumer sent in?

17 A. If we received the documents with the correct ID, yes.  
18 The information will be updated on the consumer's credit file.

19 Q. Okay. And -- and then the agents are trained to go into  
20 the dispute process at that point?

21 A. That's correct. Yes.

22 Q. And so staying with Exhibit No. 117 -- I don't know if  
23 you're still looking at Exhibit 117.

24 But if you look at page 630 through 632, does that --  
25 is that an example of the -- some of the training that you do

Mixon - D

1 for the agents to tell them what to do when that update of ID  
2 comes in when the consumer's making that dispute?

3 A. Yes.

4 Q. All right. And there's actually another example here. If  
5 you were to take a look at Exhibit No. 119.

6 A. I'm sorry. You said --

7 Q. Yeah, Exhibit No. 119. If you take a look at 119.

8 A. Okay.

9 Q. And page 937, in the bottom right-hand corner.

10 A. (Pause, referring.) Okay.

11 Q. And is this the policy that -- that goes along with the  
12 procedure that you just looked at in the prior --

13 A. Yes.

14 Q. And it appears that this -- as you mentioned before, I  
15 think you said that -- that these are frequently updated.

16 Does the information up here that says "revised by"  
17 mean that that was updated -- that this particular policy had  
18 been updated on those occasions?

19 A. Yes. It means there were some updates made to the policy.

20 Q. And you were D. Mixon, as it's listed here, on this?

21 A. That's me, yes.

22 Q. So you personally updated this procedure in April 2008,  
23 May of 2008, and then in June of 2009?

24 A. Yes.

25 Q. Okay. And then this was -- if you look at the first page,

1 this was the September 2009 dispute manual. Right?

2 A. (Pause referring.)

3 Q. Look at the first page of 119. I apologize.

4 First page of tab 119. There you go.

5 A. Went too far back. Yes, it is. September of 2009.

6 Q. And, again, these manuals are updated every year?

7 A. They're updated every year, yes.

8 Q. Would you take a look at Exhibit 118.

9 What is Exhibit 118?

10 A. This is an addendum to the policy manual regarding  
11 multiple ID changes.

12 Q. Well, would you describe to the jury what -- first of all,  
13 what an addendum is. Why -- and why you would do an addendum.

14 A. So what happens is throughout the year, Equifax -- we may  
15 need to make a change or a revision to a policy, or we may need  
16 to implement a new policy. And as we make those changes  
17 throughout the year, we will write an addendum, such as this,  
18 so that it can be easily communicated out to all of the agents.

19 And then we take these addendums, and as we're  
20 updating the manual for the annual update, we make sure that  
21 any addendums that we've made throughout the year are included  
22 in the manual at the end of the year, when the updated manual  
23 is made -- is completed and sent out to all the agents.

24 Q. All right. So mid-year or maybe as-necessary update. Is  
25 that --



1 A. These are as necessary.

2 Q. And this one, in particular, related to this topic -- that  
3 we've just been talking about -- which is updating multiple  
4 pieces of ID. Right?

5 A. Yes.

6 Q. Okay. So we've talked about the file not found letter.  
7 So that's the -- on the slide still.

8 Can you describe what the -- the need proof of ID  
9 letter advises the consumer? What does it say?

10 A. Excuse me. I'm sorry.

11 The need proof of ID or need more information letter  
12 basically just tells the consumer that we have addressed your  
13 concerns. However, there is ID information that you provided  
14 that does not match what's on the credit file. And in order to  
15 update that information, we'll need proof of that ID before we  
16 can make the update.

17 If it's an address that we need proof of, then it  
18 asks the consumer for proof of their address, and it gives them  
19 a short list of some examples of the types of documents that  
20 they can send to Equifax in order to make those updates.

21 Q. Okay. And so again, on that slide, we're talking about  
22 that top half of the ID kind of miss -- not exactly matching  
23 the credit file.

24 Why -- why is it that the process was able to start  
25 for those consumers, even though they had some different ID,

1 and it wasn't able -- or it was not able to start for the  
2 consumers -- I will say -- on the bottom half of the slide?

3 A. Well, basically, when there's a Social Security number  
4 that doesn't match, there is a chance that the credit file that  
5 actually -- if we were able to find one in the database, it's a  
6 chance that that credit file may not actually belong to that  
7 consumer.

8 So we ask for proof of a consumer's Social Security  
9 number, to make sure we have the correct credit file in hand,  
10 before we start any process or provide that credit file to the  
11 consumer.

12 Q. Do you have security concerns?

13 A. Oh, definitely. With identity theft and fraud being  
14 prevalent, and we do have security concerns, we want to make  
15 sure the credit file that we have is the correct credit file.  
16 And we try to make sure that we are sending the credit file to  
17 the correct address before we -- we send it out. So that's why  
18 we ask for proof of the address before we mail it.

19 Q. But in any instance, Equifax would not start -- or would  
20 Equifax start the dispute process if the Social Security number  
21 differed?

22 A. No. That's not -- the policy states that we should not  
23 start the dispute process if the Social Security number is  
24 different.

25 Q. All right. So let me go back to the need proof of ID

1 letter, when the reinvestigation is started.

2 When the consumer responds to the -- to that letter,  
3 what's the process of Equifax?

4 So not the -- not the file not found letter but the  
5 need proof of ID?

6 A. Well, when we get the -- the correct proof, then -- as --  
7 as I stated, the reinvestigation process should have already  
8 started.

9 And when that proof comes in, if it was the address  
10 that we needed proof of, then the address would be updated on  
11 the consumer's credit file. And the results of that  
12 reinvestigation, if it was already completed, then the results  
13 would be sent. Or if it was still in progress, then when --  
14 when it's completed, the results, again, would be sent to the  
15 consumer.

16 So when we get that ID from the consumer for the need  
17 more information letter, we -- basically we update the file  
18 with the ID, and the -- the reinvestigation process continues  
19 on to completion.

20 Q. Okay. And what happens if the consumer sends in ID -- and  
21 I'll just say, I think it might be the same for you, the  
22 letter. And the file is still not found. Equifax still isn't  
23 able to locate the file with a matching Social Security number.

24 Let's talk about Social Security number.

25 So -- so if the consumer sends in proof of ID, and it

1 includes proof of their Social Security number, and that Social  
2 Security number still doesn't match exactly a credit file at  
3 Equifax, when that updated ID is received, what happens with  
4 that?

5 A. The consumer should be sent another letter saying file not  
6 found, because we're still not able to locate a credit file in  
7 our database that matches that consumer's ID. So at that point  
8 we consider it a file not found situation, where we didn't find  
9 a file.

10 Q. Can you give us some examples of the documents that a  
11 consumer could provide to update their ID?

12 So in either instance, you're asking consumers for --  
13 for some different types of documents. What are the different  
14 documents that consumers can send in?

15 A. Some examples would be a copy of a driver's license. That  
16 would include a -- I mean -- I'm sorry. That would include  
17 a -- an address or date of birth, what we found on the driver's  
18 license. A copy of the consumer's Social Security card or a  
19 birth certificate or a W-2 form that would include the Social  
20 Security number.

21 If it's a name change, that the consumer has made,  
22 then we would accept a copy of a document that shows that  
23 consumer's correct name, or the legal document with that name  
24 change on it. So those are some examples.

25 Q. So if Equifax is having difficulty locating a file based

Mixon - D

1 on the consumer's ID, at some point might it be necessary to  
2 ask the consumer to contact furnishers directly, themselves,  
3 about that?

4 A. Can you repeat? I'm sorry.

5 Q. Yeah. So in a situation like this, like you're talking  
6 about on the slide here, where the -- the -- Equifax is having  
7 difficulty locating a credit file based on an ID that's been  
8 sent in, might it be necessary to ask the consumer to contact a  
9 furnisher of information directly?

10 A. Well, if -- if we are communicating with the consumer,  
11 then, yes, that is something that we do advise the consumers to  
12 do. We advise them to contact their data furnishers. Because  
13 if we're not able to locate a file in the system for the  
14 consumer, then we tell the consumer that there's a possibility  
15 that the company that they are doing business with -- because  
16 normally consumers will say I have credit with somebody or I  
17 have credit with these different companies. So we will advise  
18 the consumers to contact their creditors, to make sure they  
19 have your ID information correct, and to make sure they are  
20 reporting that information, so that it will show up on their  
21 credit file.

22 Q. So if we get past the identification and we're able to  
23 locate the -- excuse me, Equifax is able to locate the credit  
24 file and start a process -- I believe you said it was a  
25 three-step process.

1 MR. PERLING: I would like to demonstrate the other  
2 slide to the jury, your Honor.

3 THE COURT: All right. Go ahead.

4 BY MR. PERLING:

5 Q. Is this -- does this slide, busy as I understand it is,  
6 describe or show the dispute -- three-step dispute resolution  
7 process at Equifax?

8 A. Yes.

9 Q. Okay. Would you explain for the jury what indication is?

10 A. Indication -- indication, I'm sorry, or indicating, as we  
11 also call it, is the first step of a dispute process, as shown  
12 here. And that's where the contact from the consumer, that we  
13 receive from the consumer, is reviewed. We attempt to locate  
14 the consumer's credit file. The credit file is located. I  
15 review the information that they're disputing. And that's the  
16 first part of the dispute process, where a CDV -- which is also  
17 a consumer dispute verification form -- may be sent out to that  
18 data furnisher, or the source that's reporting the information  
19 on the credit file, to verify the accuracy of the information.

20 Q. Okay. And, again, the ACIS case is the way you track a  
21 dispute. Is that correct?

22 A. That is the way we track disputes, yes.

23 Q. Okay. Does Equifax open an ACIS case for every dispute?

24 A. Yes.

25 Q. And as part of an ACIS case, does Equifax always contact

1 the source of the information that is disputed?

2 A. Not always, no.

3 Q. Okay. Could you unpack that for us? What do you mean by  
4 "not always"?

5 A. Well, there may be some situations where a consumer may  
6 dispute something on the credit file, and when we review the  
7 credit file, the information may be reporting correctly  
8 already.

9 So, for example, a consumer may say the balance on my  
10 auto loan should be paid in full. It should be zero. When we  
11 review the file, it may be showing zero. So in that scenario,  
12 we wouldn't need to contact the data furnisher to verify  
13 anything.

14 There are also disputes that we receive, such as I  
15 mentioned, where consumers may request ID information to be  
16 updated on their credit file. So they may send us a copy of  
17 their driver's license or Social Security card, or whatever  
18 piece of ID they have, of a name change. They may send a  
19 marriage license, or something of that nature. And then we're  
20 able to update it in that sense.

21 And there also are disputes that we receive where the  
22 consumer may be disputing information on their credit file, and  
23 they may say, it's not mine. Or -- any dispute of information.  
24 And that item may not even be on the consumer's credit file.

25 Q. All right. And so as we're looking at the demonstrative

1 here, is that what we mean, in the red, where no verification  
2 is needed? Are those some examples where no verification is  
3 needed?

4 A. Yes.

5 Q. So in that instance, is the second step of verification --  
6 well, it's skipped. Is that fair to say?

7 A. The vare -- if it's not -- right. If we don't verify  
8 anything, then the second step would be skipped, yes.

9 Q. And then after maintenance, in those instances, would  
10 Equifax contact a consumer?

11 A. After maintenance is completed on the credit file, that is  
12 when the consumer will be sent the results of that  
13 reinvestigation.

14 Q. Okay. Okay. What is verification?

15 A. Verification is whether we -- or Equifax contacts the data  
16 furnishers, the courthouses, the collection agencies, whoever  
17 is reporting the information on the credit file. That's when  
18 we call the source of the information. It's when they contact  
19 the source of the information, to verify the accuracy of  
20 whatever's reporting on the file.

21 Q. And, in general, does Equifax contact -- how does Equifax  
22 contact furnishers?

23 A. The normal process to contact furnishers is -- it's an  
24 automated process. It's call EOSCAR. So it's an automated  
25 dispute verification process.



1           And the consumer's dispute information, it's entered  
2     into the ACIS database, and the verification request -- or the  
3     verification form, that we talk about, is sent automatically  
4     through the system to the -- the data furnisher in order to  
5     verify the information.

6     Q.    Okay. And what does the data furnisher do when they -- or  
7     what are they supposed to do when they get that information  
8     from Equifax?

9     A.    The data furnishers are supposed to review the consumer's  
10    dispute in its entirety and also review the information that  
11    they have in their database on that consumer's account and  
12    accurately respond back to Equifax. Either telling us to  
13    update the information. They may tell us the information is  
14    verified correct, as reported. Meaning -- meaning that what  
15    they show in their records match what we show on our records.  
16    And they also may request that we delete the information from  
17    the consumer's credit file.

18    Q.    I believe you said that maintenance was the final step in  
19    the process.

20           What -- what is the maintenance part of the dispute  
21    process?

22    A.    With maintenance, that's where the maintenance agent will  
23    review the responses. When we get responses from the data  
24    furnisher, they will also review. If we don't verify  
25    information, but if there's something that the agent entered

1 into the system saying that it was already correct on the file,  
2 they review to make sure that is accurate. And then they  
3 revise the copy or the results would be sent to the consumer.

4 Q. Okay. After Equifax has completed that final step, the  
5 maintenance step, does Equifax notify the consumer that the  
6 reinvestigation is -- or dispute process is done?

7 A. That's the results notification letter that is sent to  
8 the -- the consumer with the results on it. That does go to  
9 the consumer, yes.

10 Q. So what generally is the purpose of this  
11 reinvestigation -- these reinvestigation processes by Equifax?

12 A. What's the -- I'm sorry.

13 Q. The purpose -- what's the purpose of this three-step  
14 process?

15 A. Well, basically, the purpose of it is to make sure that we  
16 are reporting accurate information on the consumer's credit  
17 file. So that's why we go back to the source of the  
18 information, when needed, to verify that information, to get  
19 accurate information, so that the credit file will be as  
20 accurate as possible for the consumer.

21 Q. Do you feel those goals are met through Equifax's  
22 reinvestigation procedures?

23 A. I do. Yes, um-hmm.

24 Q. And we've already talked some about the training. But  
25 Equifax trained -- does Equifax train its employees to follow

1 these procedures?

2 A. We do train the -- all employees have to complete the  
3 training program. And they are trained to follow the policies  
4 and procedures that are outlined in the policy and procedure  
5 manuals.

6 Q. All right. Is the training the same for all agents who  
7 handle disputes for -- for Equifax?

8 A. The basic training is the same for everybody. The manuals  
9 are compiled by Equifax. We review the manuals, we update the  
10 manuals. And all agents receive the same training manual;  
11 however, there may be some additional training that may take  
12 place with -- with agents for additional processes. But the  
13 training is the same.

14 Q. All right. Can you describe generally the -- is it a  
15 class that the -- it's like a training class, if you go to a  
16 class?

17 A. It is a training class. The Equifax training program is a  
18 six- to eight-week program, where the -- it's a classroom  
19 setting, where the agents are in a classroom. As I state, it's  
20 approximately six to eight weeks. And they are trained from  
21 the policy and procedure manuals. And the agents are -- they  
22 also are trained using test files, in which they have simulated  
23 examples of different things that we -- or different types of  
24 disputes that we receive. So the training is classroom-based.

25 Q. Okay. And then when they finish the classroom training,

Mixon - D

435

1 are they -- are the agents generally put right out on the front  
2 line, or is there any type of -- of monitoring --

3 A. There is on-the-job training that is completed with every  
4 training class. When the agents are trained, they're actually  
5 not only monitored closely right after the training is  
6 completed but they're actually -- the monitoring actually  
7 starts during the training class itself. Where training or  
8 quality -- I'm sorry. Quality agents, the trainers, the  
9 supervisors -- even I do some of the quality observations for  
10 training classes.

11 So we are actually -- as we're -- as we're training  
12 them and they're processing and doing the hands-on in the  
13 training class, we start the quality process and start  
14 monitoring during that phase. So it's not just when they get  
15 to the floor.

16 Q. Okay. So you mentioned this is a six- to eight-week  
17 course. Is that the same for the operators -- let me back up.

18 Are the operators that do steps 1, 2, and 3 generally  
19 one person trying to do all of that? Or do you do it  
20 differently than that?

21 A. Well, we do have some agents who are trained to process.

22 We call them multi -- multi-function agents, who are  
23 trained to process all of these functions.

24 And then there are other groups of agents who are  
25 trained based upon just the -- the -- the basic function, the

1 indicators. Those agents would only process disputes.

2 Disclosure agents would only process disclosures. And -- and  
3 verification agents and maintenance agents, the same.

4 Q. And we'll talk about the disclosures in a little bit. So  
5 far we've just been talking about the dispute agents.

6 There other people at Equifax that handle requests  
7 for consumer credit files, otherwise called disclosures?

8 A. Yes.

9 Q. But back to the training of these people that do these  
10 three functions, is it one class of six to eight weeks on all  
11 of this, or do they have separate trainings?

12 A. No, it's separate training classes.

13 The indicating training -- well, disclosure, and  
14 indicating training, that is generally one class, because  
15 before an agent can process disputes, they have to know how to  
16 process disclosures. So disclosures is like the basic function  
17 that a dispute agent must know. So that would be one class for  
18 a dispute agent.

19 But for the verification and the maintenance, those  
20 are separate classes that are trained to agents outside of the  
21 dispute process.

22 Q. Who handles the training?

23 A. Equifax initially handles the training. And there are  
24 also trainers at each location that processes the -- the work,  
25 who will train the -- the agents.

Mixon - D

1 Q. You mentioned some -- some quality, where you follow the  
2 agents when you first -- when they first complete the classes.

3 Does that quality continue -- the quality assurance  
4 continue throughout the employees' tenure while they're working  
5 for Equifax?

6 A. Yes.

7 When the agents first complete their training, they  
8 have what we call a 90-day -- it's like a -- an on-the-job  
9 training process, where they are -- they do receive quality  
10 observations during that time frame. And then even after that,  
11 all agents have quality checks that are completed on -- on an  
12 ongoing basis. Daily, weekly, monthly, there's quality  
13 completed on the agents.

14 Q. Okay. What happens -- do you -- strike that.

15 If Equifax has this extensive training in quality,  
16 that you've just described, why do you have mistakes?

17 A. Basically, I -- with mistakes, I just have to say, it's  
18 human error. The agent gets confused sometimes. Agents forget  
19 sometimes. And they don't refer back to their training  
20 material. You know, sometimes they think they know it, so --  
21 it's just a human error. Mistakes happen, unfortunately.

22 Q. Do you conduct refresher courses?

23 A. We do. We conduct refresher courses throughout the year.

24 When we identify mistakes that the agents are -- are  
25 making with -- through the quality process, when we identify,

1 definitely, like trends, where we see the agents are making a  
2 mistake in a specific area, then we will create or develop  
3 training or refresher training, based upon what we have  
4 identified. And that's to remind the agents, you know, what  
5 they need to do.

6 In addition to the refresher training that may be  
7 created, I'm just -- as we identify areas when we get from  
8 other dispute agents, the maintenance agents -- because they're  
9 reviewing everything as they see things; that the verification  
10 agent or the dispute agent may not have done. They may bring  
11 that to the attention of a supervisor, or a lead, or even their  
12 trainer.

13 And on a weekly basis, we have a communication that  
14 we'll send out to all agents that process, and it's just a  
15 weekly -- a reminder, so we'll just come up with some little  
16 tips that we'll put in there, in the communication. It's like  
17 a newsletter that we send to them.

18 And the trainers will review it, or the supervisors  
19 or managers will review that every week with all of the agents.  
20 And then they are required to respond back to myself and my  
21 trainers, stating that they have covered that information with  
22 all agents.

23 Q. You referred to them as your trainers. You feel  
24 personally responsible for the training?

25 A. Definitely, yes.

1 I'm personally responsible for -- for the training,  
2 yes.

3 Q. Now, are some of your agents trained on specific types of  
4 contacts from consumers?

5 A. Yes.

6 Q. So would you give the jury some examples of the specific  
7 type of contacts that you might up-train, I think might be a  
8 term you used, to -- with those agents.

9 A. Sure. We up-train agents. And we call those specialty  
10 agents. So we have agents who may be trained -- or who are  
11 trained to process fraud disputes and disputes of mixed files,  
12 when a consumer's credit file is mixed.

13 So we have specialty agents that we train to process  
14 those types of disputes.

15 Q. What's a mixed file, that you just -- like you just  
16 mentioned?

17 A. A mixed file is a situation where either two consumers'  
18 credit files have become merged together, or there also may  
19 be -- it could be not an entire file that's been merged. It  
20 may be one or two items that may have been reported to the -- a  
21 different consumer's credit file.

22 Q. How does Equifax identify a dispute as a mixed file  
23 dispute?

24 A. Well, we can identify mixed files basically upon how the  
25 consumer disputes.



1 Normally, when we receive a mixed-file dispute, many  
2 of those -- that communication comes to us where the consumers  
3 have gotten a copy of their credit file, and they will notice  
4 something on their file, and they may say, This doesn't belong  
5 to me. And they will tell us who it belongs to. And it may be  
6 someone who has the same or similar name.

7 So we may get that, such as a junior/senior situation  
8 with a father and son. And the -- one may dispute and say,  
9 This is not mine. This is my father's. We have the same name.  
10 This is my son's. We have the same name. So that's one way  
11 that we can identify a mixed file.

12 Q. How does the -- the -- the mixed file dispute get to the  
13 specialized agent? The special mixed-file agent?

14 A. Well, we have -- when those mixed-file disputes are  
15 identified, the agents in the mail room who processes the mail,  
16 they are trained on the mixed-file criteria, how to identify a  
17 mixed file. They receive that training.

18 So they are able to send that document directly to  
19 the -- we have what we call cues, where the agents will log  
20 into a cue in the ACIS database, and the agents will process  
21 the disputes from that cue.

22 So when a mixed file is identified on the front end,  
23 by the mail room, they're sent directly to that cue for the  
24 mixed-file agents to process.

25 If they are not identified in that manner, if a --

Mixon - D

441

1 what we call the front-line agents, the -- maybe the agents who  
2 are not trained to process mixed files, they have also received  
3 criteria to help them identify what is considered a mixed file.

4 So when they get that, they have a policy that states  
5 they're supposed to transfer or redirect that correspondence to  
6 that cue, so that it can be processed by a mixed-file trained  
7 agent.

8 Q. And you mentioned redirection.

9 I -- I ask you to look at Exhibit No. 117, and pages  
10 694 through 696. It should be the last few pages.

11 Do those -- does -- is that the training that you do  
12 for the redirection for your front-line agents? Is that an  
13 example of the training?

14 A. This is the procedure that -- that tells the agent how to  
15 redirect to a specialty team, such as mixed files, yes.

16 Q. All right. And then also, if you would look at Exhibit  
17 133, please.

18 Again, is this a whole separate training material  
19 on -- on redirecting to the fraud and mixed files?

20 A. Yes. This is the training that I mentioned that's trained  
21 to the -- the mail room agents, how to identify fraud and  
22 mixed. And also to the front-line agents, to help them  
23 identify what may be a fraud or mixed dispute, so that it can  
24 be redirected properly.

25 Q. Okay. Now, I know there's -- there's several, maybe,

Mixon - D

442

1 hundreds of pages of mixed-file policies that Equifax -- but I  
2 would like to see if you can describe for the jury how Equifax  
3 addresses mixed files.

4 Say, for instance, a consumer notifies Equifax that  
5 they believe they've been mixed, and it gets to the mixed file  
6 cue, I think is what you called it.

7 What is Equifax's general procedure for handling a  
8 mixed-file dispute?

9 A. The procedure or policies that -- for a mixed file --  
10 handling a mixed file dispute, the agents -- one thing that  
11 they will do is they will search the database to see if they  
12 can locate another file for another consumer. They will use  
13 information that the consumer may have provided.

14 Sometimes consumers will -- as I stated, they will  
15 know exactly who they think it's mixed with, and they will give  
16 us that information.

17 So we'll search our database to see if we can locate  
18 that credit file, and we'll look to see if that information is  
19 also on that consumer's credit file as well. And that would be  
20 indication that it's a mixed file.

21 We will -- the agents are trained to look back at  
22 CDVs, to see if there is a CDV -- which is the consumer dispute  
23 verification form; which we get back from the data furnishers,  
24 when they dispute information.

25 Those data furnishers will provide ID information on

Mixon - D

443

1 those CDVs. So we may use that information, as well, to try  
2 and locate another file on the consumer, or on a different  
3 consumer.

4 When we locate information or we determine that there  
5 are multiple files in the database for consumers that have very  
6 similar ID information and also when we determine that there  
7 are accounts that may -- that have been reported on consumers'  
8 credit files inaccurately, what we will do in that sense is we  
9 will perform procedures that we call blocking. So we block the  
10 information on our consumer's credit file, so that it will not  
11 merge again. So we have those procedures in place.

12 Q. All right. Let me ask you about some of the things you  
13 just mentioned.

14 You said your agents look for another file in the  
15 system. Do you mean looking for, like, another file with some  
16 similar ID on it?

17 A. Yes.

18 Q. Does Equifax use the term "N file"?

19 A. That's called the N file, where we look for another  
20 consumer's credit file. That would be the N file.

21 Q. All right. And so if your agent finds no other file or no  
22 N file, do -- are they trained to make a note that none was  
23 found?

24 A. They do. They note in the -- the ACIS case for the  
25 consumer that sent the dispute. They'll look for the N file.

Mixon - D

444

1 If they don't find it, they will note -- normally, they'll --  
2 we'll see a note that says "N file not found."

3 So that will let us know, as the quality team is  
4 looking at the -- the case to review it for quality, they'll  
5 know that the agent did in fact look for that credit file, to  
6 see if there was another file there.

7 If their N file information is found, that  
8 information will be noted on the ACIS case, so that when this  
9 case gets to the maintenance agent, the maintenance agent will  
10 know there is another credit file in the system that has ID  
11 information that closely matches our consumer.

12 So that's an indication to them to -- what I just  
13 mentioned -- block that information. We have different codes  
14 that we can use to block it. And block it is just a way of,  
15 like, suppressing it, so that it cannot cross over to different  
16 files. So --

17 Q. Are your mixed-file agents trained to look at previously  
18 cases and see what's happened before with the consumer, if  
19 there have been any previous contacts?

20 A. They are, yes.

21 Q. Will they look and see if there were any online combines?

22 A. Mixed files agents are trained to look for what's called  
23 an online combine. Yes.

24 Q. Okay. And -- and what -- what do they do if they find an  
25 online combine?

Mixon - D

445

1 A. If an online combine is found, that's an indication --  
2 what online combine -- that's when the credit files have, for  
3 some reason, automatically combined together. So when they  
4 look for the online combine, that's an indication that there is  
5 probably a mixed-file situation that's happening. And the  
6 agents will know that they need to take steps to try to make  
7 sure that the information that's on our consumer's credit file  
8 is in fact the consumer's information.

9 If there's any information that we can identify  
10 through the CDV process with looking at the previous cases, if  
11 they're able to identify anything, then they will know that  
12 because of that online combine, they should take that  
13 information and remove it from our consumer's credit file.

14 Q. All right. Now, does Equifax -- do the agents, once they  
15 determine there's been a mixed file and they've identified  
16 that, are there steps that they can take to prevent future  
17 mixing?

18 A. That's where the blocking information comes in. They can  
19 block the information, so that it won't combine again. And  
20 when blocking -- and they can add the code that we call a do  
21 not combine.

22 So that is something that is put on a consumer's  
23 credit file so that the -- the likelihood -- so that files  
24 won't combine anymore. So another file can't combine with that  
25 consumer.

1 Q. So, as an example, can Equifax's agents note that a Social  
2 Security number is blocked, so that if the consumer contacts  
3 Equifax with that Social Security number, that file is not  
4 found?

5 A. If a Social Security number is blocked on the consumer's  
6 file, if that is the -- if it's a consumer's Social Security  
7 number that somehow became blocked, yeah, that file won't come  
8 up for the agent.

9 Q. Do they also have a function called a do-not-combine  
10 function?

11 A. Yes. That's what I just mentioned, the do not combine,  
12 that they will add to the file so they won't combine. Yes.

13 Q. Okay. The -- you said that these -- these -- special  
14 agents, do they have additional training separate from the  
15 front-line agents?

16 A. The mixed-files agents?

17 Q. Yes.

18 A. They do receive additional training. They are --  
19 mixed-file agents are selected from agents who are already  
20 dispute trained, and the agents who have been -- or exhibited  
21 higher performance with their quality with the dispute process.

22 So they are identified by the quality team, as well  
23 as by their supervisors and leads. And they are taken back  
24 into the classroom, and they receive additional training.

25 There is a separate manual for mixed-files training,

1 and they -- and they receive that training from that policy and  
2 procedure manual.

3 Q. Okay. And since you mentioned that, let's take just a  
4 quick look at Exhibits 127 and 134.

5 Are those excerpts or parts of your mixed-file  
6 additional training for that -- those advanced stages?

7 A. You said 127?

8 Q. 127 through 134. Are those part of your additional  
9 training for mixed files?

10 A. Yes.

11 Q. And so are these your cream-of-the-crop agents that you  
12 have taken into the mixed-file training, essentially?

13 A. We do consider the mixed file -- the agents who are chosen  
14 to process or be trained on mixed files, we consider them to be  
15 at a higher level of agent. Yes.

16 Q. Okay. I think we've covered the dispute process. Let's  
17 talk about the disclosure process a little bit.

18 If a consumer wants to -- contacts Equifax and wants  
19 to see their credit file, are they entitled to see it?

20 A. Yes, they are.

21 Q. All right. And is there a -- is that policy in your  
22 manuals, that they are entitled to get their credit file?

23 A. It is in the policy manual, yes.

24 Q. Okay. If you would take a look at Exhibit 116, please, at  
25 page 534. It should be the third page of that. It says "534"



1 in the bottom right-hand corner.

2 A. Okay.

3 Q. Is that the written policy describing that Equifax issues  
4 disclosures when consumers request?

5 A. Yes.

6 Q. How can a consumer get a copy of their credit file?

7 A. A consumer can request a copy by mail, by phone. They can  
8 go online to get a copy of their disclosure -- or a copy of  
9 their credit file.

10 Q. Okay. Are -- does Equifax charge consumers to give them  
11 copies of their credit files?

12 A. There are some instances when a consumer may be charged  
13 for a copy of their credit file, yes.

14 Q. All right. Does every consumer get some free ones,  
15 though?

16 A. Yes. Every consumer -- I believe it was in 1990, a law  
17 was passed that was called the FACT Act.

18 And it entitles every consumer to receive one free  
19 copy of their credit file every 365 days. So those consumers  
20 are eligible for that copy of the credit file.

21 Q. And so does Equifax refer to those as annual-free?

22 A. That's an annual-free.

23 Q. Can you describe for the jury how -- how that works? How  
24 you get your annual-free?

25 A. Yes. The annual-free -- the request for the annual-free

1 credit file -- as I stated, every consumer is eligible for that  
2 free copy every 365 days.

3 So a consumer can go online, and there is a website,  
4 annual-free -- annualcreditreport.com. The consumers can go  
5 online to that cite, and they are able to receive a free copy  
6 of their credit file from any of the three major credit  
7 reporting agencies.

8 So they can choose, at that time, to receive it from  
9 one agency, they can get it from two, or they can get it from  
10 all three. So it's their choice. Sometimes they may want --  
11 just want it from one agency at that time. They may come back  
12 later and decide they want it from another agency, and so on  
13 and so forth.

14 So they will go to that website and request a copy of  
15 their annual-free.

16 Q. All right. Now, what information does Equifax need from  
17 the consumer to provide the file if they get a request via  
18 mail?

19 A. We -- we ask the consumer to provide name, address, Social  
20 Security number, and date of birth. Again, to -- to assist us  
21 with accessing the credit file.

22 Q. And why does Equifax require all of that information?

23 A. That -- the more complete ID information we have, we  
24 are -- that helps us to actually located the credit file, and  
25 make sure we have a correct credit file in hand before we send

1 it out to the consumer.

2 Q. And if -- if the consumer's speaking with somebody with  
3 Equifax on the telephone, what information is required to  
4 provide that consumer with a copy of their disclosure?

5 A. The same information as -- is required or requested when  
6 we speak to a consumer on the phone.

7 Q. Now, if -- if the consumer doesn't provide enough ID or  
8 the ID doesn't match -- for instance, Social Security number is  
9 not a match to what is in Equifax's system, what happens then?

10 A. When we receive the consumer's request, if the Social  
11 Security number doesn't match, the copy of the credit file will  
12 not be sent to the consumer. We will send the consumer the  
13 standard form letter, just as we do with -- stating that we  
14 can't find a file in the database with the ID information  
15 they've provided. And it asks them to provide a copy of the  
16 document that shows the information, so that we can attempt,  
17 again, to locate the credit file. If it's --

18 I think that's what you asked me. Right?

19 Q. Yes. So is it like that first slide, where you showed  
20 us --

21 A. Right. It's basically like a reinvestigation process,  
22 that first slide that we looked at. Based upon which pieces of  
23 ID that doesn't match, it depends whether we will send out the  
24 credit file.

25 Q. And why would Equifax not want to send a disclosure

1 without getting adequate proof of ID?

2 A. Because we want to make sure we're sending it to the  
3 correct consumer. Which with the disclosure process, that is a  
4 little bit different. Because with a disclosure process, we  
5 need a correct address for the consumer before that credit file  
6 can be sent, because we definitely want to make sure -- it's  
7 our intent to make sure we're sending that credit file to the  
8 right location.

9 Q. Okay. And the policies and procedures regarding the  
10 disclosures you just described are in manuals, as well?

11 A. Yes.

12 Q. For instance, the need to verify ID -- if you take a look  
13 at -- at Exhibit 116 again, at page 538.

14 Is that the policy for verifying identifying  
15 information?

16 A. Yes.

17 Q. Okay. And, again, you revised that prior to -- to this  
18 being published and -- in -- in 2008. Correct?

19 A. I did.

20 Q. Okay. And -- and the next few pages of this same manual,  
21 starting at 539, also relate to getting additional information  
22 in order to get the disclosure out to the consumer. Right?

23 A. That's correct, yes.

24 Q. All right. Let me ask you to take a quick look at Exhibit  
25 126. And these are the -- the procedures at Equifax at page

1 1211 and through 1213, or 1,213, I suppose.

2 Those are the procedures for producing a disclosure  
3 to the consumer when the ID doesn't match. Is that right?

4 A. This is the disclosure manual, yes.

5 Q. All right. Let's -- now, were you personally involved  
6 with handling Ms. Miller's disputes or contacts?

7 A. No.

8 Q. Have you had a chance to investigate those disputes and  
9 contacts?

10 A. Yes.

11 Q. And what did you do to educate yourself about Ms. Miller's  
12 disputes and contacts?

13 A. I looked at the correspondence that we received from  
14 Mrs. Miller, and I have looked back in our database to see what  
15 we did.

16 Q. And was there -- was there incorrect information on  
17 plaintiff's credit file? Was there incorrect information on  
18 plaintiff's credit file?

19 A. Yes.

20 Q. How did it get there?

21 A. The information was reported to the credit file by a data  
22 furnisher or a creditor.

23 Q. Did it come on by way of an online combine?

24 A. As I recall, the -- the file -- there was an online  
25 combine, and the -- the information did combine with -- with

1 her file; another file combined with hers.

2 Q. All right. Did -- did that online combine, in this  
3 instance, create an unusual situation involving plaintiff's  
4 credit file?

5 A. The online combine -- now, I will say that I'm not really  
6 familiar with the whole online combine process. But I -- in  
7 reviewing Ms. Miller's credit file, I do know that, as you  
8 state, the online combine happened. And because of that  
9 situation, it did create a situation that was a little bit  
10 unusual and -- a little bit unusual for us to handle, yes, it  
11 did.

12 Q. All right. And did the combine result in a file that had  
13 plaintiff's name and address and a slightly different Social  
14 Security number?

15 A. It did -- it had -- yes, the name and address matched and  
16 the Social Security number was different, yes.

17 Q. Did that create a unique challenge for Equifax's agents?

18 A. Well, as I reviewed the situation and what happened, it  
19 did, yes. Because that credit file -- the combining of the  
20 credit files with that different Social Security number did  
21 create a unique situation that we don't want to see happening;  
22 that I haven't seen happen normally. So --

23 Q. All right. Even though Equifax has the mixed file  
24 policies and procedures that you described for the jury, why  
25 was this particular situation unique?

1 A. Well, as I looked through the -- the information and I  
2 looked at what happened, it -- I guess it became unique in  
3 that, one, the files were combined. That was the number one  
4 thing that happened with the different Social Security numbers.  
5 But, also, I think there was a situation where -- I don't  
6 think. There was a situation where the copy of the credit file  
7 was actually sent to Mrs. Miller with the incorrect Social  
8 Security number on it.

9 Q. Okay. And so you got a little ahead of me.

10 Did Equifax receive requests from Ms. Miller for  
11 copies of her credit file?

12 A. Yes.

13 Q. And did Equifax send plaintiff copies of her credit file?

14 A. Ms. Miller was sent a copy of a credit file, yes.

15 Q. All right. And so did Equifax's agent -- when they first  
16 sent a copy of the credit file, to Ms. Miller, after the online  
17 combine, did they make a mistake in doing that?

18 A. Yes.

19 Q. Okay. Why is that?

20 A. Well, again, we have the policies and procedures in place  
21 that we train, that we just talked about. And the policy says  
22 that if the Social Security number is different than what the  
23 consumer provides, that the credit file should not be sent to  
24 the consumer.

25 So that in fact was an error -- unfortunately, an

1 error that was made by our agent -- in that they sent out a  
2 copy of the credit file to Ms. Miller with that incorrect  
3 Social Security number on it when they shouldn't have.

4 Q. All right. And then do you remember seeing the notes  
5 about a telephone call that the plaintiff had with Equifax?

6 A. Yes.

7 Q. And should the agent, based on that telephone call, have  
8 sent the consumer a copy of her disclosure?

9 A. No.

10 Q. Why not?

11 A. Because, again, the Social Security number that was on the  
12 credit file, that we had in our database, it still did not  
13 match what Mrs. Miller had provided. So that file should not  
14 have been sent to Ms. Miller.

15 Q. Instead, should Equifax have sent her a letter?

16 A. Well, in that situation, because the agent was actually  
17 speaking to her on the phone, then that could have been verbal  
18 communication and/or a letter sent to Ms. Miller, yes.

19 Q. So there -- there was also a disclosure sent to the  
20 plaintiff in August of 2001 -- excuse me, August of 2011, after  
21 the plaintiff sent in some proof of ID. Do you recall seeing  
22 that?

23 A. Yes.

24 Q. Should -- should that one have been sent?

25 A. If I -- with that one, that situation, if I recall, we did



Mixon - D

456

1 receive -- or Equifax received a copy of a -- I believe it was  
2 a utility or an insurance bill, something that had the  
3 complete -- or -- and current address on it. But the W-2 form  
4 that was received did not show the complete Social Security  
5 number.

6 So, again, we didn't have the matching Social  
7 Security number. We didn't have enough proof to update the  
8 Social Security number or to search for another file, so we  
9 should not have sent that credit file to Ms. Miller.

10 Q. All right. Ms. Miller later did send in to Equifax  
11 sufficient information to update her ID. Is that -- did that  
12 happen?

13 A. Yes, she did send sufficient ID information. She did,  
14 yes.

15 Q. Did Equifax update the ID?

16 A. Unfortunately, that ID information was not updated when  
17 that information came in from Mrs. Miller, and it should have  
18 been. Yes.

19 Q. And did plaintiff also send in adequate ID with a dispute  
20 for Equifax to update the ID, and then start the dispute  
21 process?

22 A. Yes.

23 Q. Did that happen?

24 A. No.

25 Q. Why not?

1 A. Again, I have to say it was agent error.

2 They review the document carefully, or -- I can't say  
3 what happened there. But based upon our policies and  
4 procedures, they were trained that information should have been  
5 updated on Ms. Miller's file because we did receive the  
6 complete ID information, as we requested. And we should have  
7 started the reinvestigation process at that point. So it  
8 should have been done and, unfortunately, it was not done.

9 Q. All right. Did Equifax receive some disputes from  
10 plaintiff?

11 A. Yes.

12 Q. All right. And did it initiate the three-step process,  
13 like we're looking at, still, here on the screen? Did that get  
14 started?

15 A. No, it did not get started.

16 Q. Okay. And why -- why not? Why didn't that get started?

17 A. The agents, again, did not start the dispute process. So  
18 that was another error that was -- that was by the agents,  
19 unfortunately.

20 Q. Okay. Well, plaintiff's Social Security number did not  
21 match the Social Security -- or did the plaintiff's Social  
22 Security number match the Social Security number on the credit  
23 file when she contacted --

24 A. Well, the Social Security number didn't match what was on  
25 the credit file at the time. It still did not match because it

1 had not been updated on the file, so it didn't match.

2 Q. And did Equifax send plaintiff letters that contained the  
3 language that said that her concerns had been addressed?

4 A. Yes.

5 Q. All right. But they hadn't been addressed, had they?

6 A. They had not been addressed.

7 Q. Why -- why did those go out?

8 A. Well, we have the -- the different standardized form  
9 letters that we send to the consumers, based upon whether we  
10 see -- we receive correct ID information from the consumer.

11 So with this situation, that form letter was sent to  
12 the consumer. And, again, it was a situation where the agent  
13 chose the -- the wrong letter to send to the consumer, as  
14 opposed to sending a letter that said, We could not find a file  
15 in the database that matches your ID. That letter was sent,  
16 saying we have addressed your concerns, however, we still need  
17 proof of your ID. So it was -- just the wrong letter was sent  
18 to the consumer at that time.

19 Q. And is that language, that -- that your concerns have been  
20 addressed, is that in the form letter?

21 A. That is in the standard form letter, yes.

22 Q. Okay. So you didn't have an agent adding that to the --  
23 strike that.

24 Did Equifax intend to mislead plaintiff in those  
25 letters?

1 A. No, definitely not. It's never our intent to -- to  
2 mislead a consumer.

3 It's just a situation when you're -- with this  
4 unusual situation that happened, the wrong letter was chosen  
5 and sent to her. It was sent to Ms. Miller, so --

6 Q. I think you might have said earlier that -- does Equifax's  
7 system allow its agents to look back to the prior  
8 correspondence with consumers?

9 A. Yes.

10 Q. All right. In fact, that process is in your training  
11 manual. And let's just take a quick look at that at page 1 --  
12 excuse me. Exhibit 117, page 556.

13 And it says there, towards the bottom, "Consumer  
14 contacts history." And that goes on to the next page.

15 Is that the process by which an agent can look back  
16 to prior correspondence?

17 A. Yes. This does explain to an agent how to -- to review  
18 back and look at prior contact from the consumer.

19 Q. Did you see any evidence that Equifax had -- or -- let me  
20 back up.

21 Did that happen in any of plaintiff's contacts, where  
22 the agent went back and looked at the prior correspondence?

23 A. I didn't see evidence where that was actually done.

24 Q. Should -- should it have been done?

25 A. It should have been done. It's here, in the manual. It's

1 trained to the agent. So it should have been done, yes.

2 Q. Does Equifax also have some policies in place that its  
3 agents should advance some disputes to a different department  
4 if they're confused?

5 A. Yes. There -- there are policies in place for that.

6 If I recall, at -- on the policy manuals, at the  
7 bottom of the pages of the policy manuals, there's a notation  
8 that says if there's any question or concern or confusion  
9 within -- you know, about the policy that's written, that the  
10 agent should seek assistance with that.

11 The policy addendum that we actually referred to a  
12 little bit earlier regarding multiple ID changes states to the  
13 agents that if a consumer is requesting multiple identification  
14 to be changed on the credit file, that it should be referred to  
15 what we call the Office of Consumer Affairs. So that policy is  
16 there.

17 Q. Okay. And that's actually the department that you  
18 physically work at. Correct? The Office of Consumer Affairs?

19 A. I do work with the Office of Consumer Affairs, yes.

20 Q. Now, what can the Office of Consumer Affairs do  
21 differently than, say, your front-line agents?

22 A. Agents in the Office of Consumer Affairs, they are veteran  
23 agents who have been with the company for -- some of them as  
24 long as I have, or longer.

25 And what they can do is actually -- if there's

Mixon - D

1 contact information provided by the consumer, they can actually  
2 call the consumer or e-mail the consumer.

3 We preferably call, if we have a phone number, to --  
4 just to get clarification from the consumer as to as to what it  
5 is the consumer is requesting or what it is that Equifax needs.

6 Q. After the lawsuit was filed, did the Office of Consumer  
7 Affairs update this consumer's credit file?

8 A. Yes. The -- the -- they did. They updated it.

9 Q. Could you take a look at Exhibit 112.

10 A. 112. (Pause, referring.)

11 Q. Is that a copy of the credit file with the OCA updated  
12 after the policy was filed?

13 Did you find it? I apologize. Exhibit 112.

14 A. I have it, yes.

15 Q. Are any of the items that plaintiff previously disputed  
16 reported on that credit file?

17 A. No. With this copy, with -- everything had been removed  
18 that Ms. Miller had disputed.

19 Q. Has Equifax taken steps to prevent these accounts from  
20 ever coming onto the file again?

21 A. Yes.

22 Q. What -- and what steps were those?

23 A. Well, one thing that we've done is we've actually -- when  
24 the items were removed from Mrs. Miller's credit file, we  
25 add -- added a code to those items that we call a suppression

1 code. So those items cannot re-report on her credit file.

2 So the cross-blocking that I -- or blocking that I  
3 mentioned earlier, whereas we will -- where we've identified ID  
4 information that was mixed on a consumer's credit file, we  
5 block that information so that it can't come back on the  
6 consumer's credit file. And we also add the do not combine --  
7 added the do not combine to the credit file, so that the credit  
8 file will not combine with any other credit file in the system.

9 Q. What -- what's been done at Equifax to address this  
10 situation that -- that plaintiff found herself in here?

11 A. Well, with this situation, as -- you know, we've stated  
12 before, it was unusual. It's something -- a situation that I  
13 can personally say, in my 20 years of processing Equifax, that  
14 it's not something that -- that happens on a regular basis at  
15 all.

16 So one thing that I've done, being that I am the  
17 manager of the training department -- the quality department, I  
18 write the policies and procedures, we have one -- we have  
19 communicated -- sent communication to the agents to refresh  
20 their training, to the agents.

21 Something else that we've actually done is we started  
22 about two years ago with mixed files, to make sure that  
23 everybody that processes mixed files is -- gets the refresher  
24 on mixed files. What we do is we created an annual mixed files  
25 training, a refresher training. And with that, what we do is

Mixon - D

463

1 we -- we have taken scenarios, such as what happened with  
2 Mrs. Miller, or any other unusual scenarios that we identify  
3 through the quality process, that we've identified from other  
4 mixed-files agents, that we've identified from consumers. And  
5 we use those as a training tool, as a part of that training.  
6 And it's a two-day training -- training process that we  
7 facilitate with the agents to -- just to refresh them and to  
8 bring them up to speed and give them additional information on  
9 mixed files. So that is definitely something that we've done.

10 Another thing that I have personally done, because of  
11 the situation with the letters, that happened with -- with this  
12 scenario, being that -- again, I think this -- it's my  
13 responsibility to make sure that -- I don't want another  
14 consumer to get caught up in a loop like what happened with  
15 Mrs. Miller, or where -- where we're asking her to send ID  
16 documents and we're sending her the wrong letter. So we -- I  
17 personally have a particular -- my own that I'm doing with the  
18 trainers and other leadership team members where we're  
19 reviewing all of the letters that go out to the consumers, to  
20 make sure those letters are clear and concise. And that we  
21 have letters that fit scenarios.

22 And, of course, we can't have a letter for every  
23 scenario that may come up, because there may be another unusual  
24 scenario. But when something like that happens, we do have the  
25 policy and the procedure in place to say this type of scenario



1 needs to be redirected to our Office of Consumer Affairs, so  
2 that it can be handled differently. Because it does require a  
3 different handling than what is actually noted in the -- in the  
4 manuals.

5 So those are just some of the things that -- that I  
6 have personally done, you know, in using this -- this scenario.  
7 This is definitely the -- a scenario that -- that is written  
8 into the training program that we'll have for 2013, for our --  
9 the mixed-files agents.

10 Q. Thank you, Ms. Mixon.

11 MR. PERLING: Those are our questions on direct, your  
12 Honor.

13 THE COURT: I think it's probably a good time to  
14 break for the day, and we'll take the cross-examination  
15 tomorrow.

16 But before we adjourn, jurors, I wanted to tell you  
17 that I'm thinking we may actually get to closing arguments and  
18 getting the case in your hands tomorrow afternoon. I would  
19 like to reserve flexibility on that front. And by that, I  
20 mean, I would like you not to make lunch plans tomorrow that  
21 commit you to meet somebody at a particular time, and so forth.

22 In fact, tomorrow, we'll provide you lunch.  
23 Ms. Boyer will give you a menu in the morning. Albeit, you  
24 know, a sandwich, or something like that, that can be delivered  
25 here.

Colloquy

465

1 I'm doing that to try to maximize the use of your  
2 time, so that if we get to a place where you can -- we can  
3 condense the lunch hour a bit and get the case in your hands  
4 earlier, that's fine.

5 We won't push it. We won't make you go too hard.  
6 But as I understand it, there's one more witness for the  
7 defense after this one is completed?

8 MS. SUMNER: That's correct, your Honor.

9 THE COURT: And so it's likely we'll be into giving  
10 you instructions and hearing the arguments of counsel at least  
11 by early afternoon tomorrow. So I think that's a better use of  
12 your time.

13 So would you please not make lunch plans. When you  
14 come in the morning, Ms. Boyer will have menus for you to fill  
15 out, and we'll -- we'll work through that. All right?

16 Now, it's very important, again, that you not do any  
17 research or allow anything about the case to cross your path.  
18 Don't talk to people about it. Don't let people bring the  
19 subject up to you. We'll start again, for your purposes, at  
20 nine o'clock tomorrow. If you come a little before nine,  
21 you'll have time to fill out those menus. Okay?

22 I appreciate very much your attention. I know the  
23 parties do.

24 So please leave all of your papers here.

25 Please rise for the jury. And, good evening, folks.

1 Have a good evening.

2 (Jurors exit.)

3 THE COURT: Ms. Mixon, you can step down, if you  
4 would like.

5 THE WITNESS: Thank you.

6 THE COURT: Other than returning once again to jury  
7 instructions, do we have any matters for the plaintiff?

8 MR. JUSTIN BAXTER: No, Judge.

9 THE COURT: For the defense?

10 MS. SUMNER: I don't believe so, your Honor.

11 THE COURT: Let's do this. Let's reconvene at 8:30  
12 in the morning. I need your best argument in a concise fashion  
13 then. In other words, if you have specific language you want  
14 me to add to what is currently in your third draft, I want to  
15 know what it is, and I want the authority for it. And I'll  
16 make a decision, and we'll be finished with it by nine o'clock,  
17 so we can get the jury in the box. And I can get the jury  
18 instructions finalized.

19 Except for this punitive damage contention, however,  
20 it appears to me every other part of the instructions are  
21 settled, so that you should be able to count on them in the  
22 language that you have seen, as you prepare for closing  
23 arguments.

24 So if you want to reproduce parts of them in an  
25 electronic format, or something, as you argue to the jury, I'm

Colloquy

467

1 happy to do that.

2 If you want to just point a juror to -- point the  
3 jury to a page or text while you argue, they'll have exactly  
4 the same final set as you will. And I just want to give you as  
5 much flexibility as possible.

6 Anything else for tonight, from plaintiff?

7 MR. JUSTIN BAXTER: No, Judge.

8 THE COURT: You already --

9 MS. SUMNER: One request, your Honor. If we might  
10 have an electronic version of the jury instructions, it  
11 might --

12 THE COURT: The third draft? Yes, we can e-mail that  
13 to you.

14 MS. SUMNER: Thank you.

15 THE COURT: We'll do that. Okay. We'll do it for  
16 all of you.

17 All right. Have a good evening.

18 MS. SUMNER: Thank you, your Honor. You, too.

19 THE COURT: See you tomorrow at 8:30.

20 (Court adjourned.)

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Certificate

468

--oOo--

I certify, by signing below, that the foregoing is a correct transcript of the oral proceedings had in the above-entitled matter this 2nd day of August, 2013. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

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AMANDA M. LeGORE, RDR, CRR, FCRR, CE